Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME III

TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

versus

MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees.

SLOSS SHEFFIELD STEEL & IRON COMPANY,
Appellant,

versus

SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,

versus

RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Alabama

ORIGINAL RECORD RECEIVED APR 1 1942

The Court:
Number what?

The Clerk:
23.

(Thereupon a map entitled "Woodward Iron Company. Office of Chief Mining Engineer. Red Ore Mines, Slopes 1, 2 and 3," was marked Sloss Exhibit No. 23.)

Mr. Harris:
If the Court pleases, we didn't anticipate we would get any Woodward witnesses this morning. I don't think I could complete my cross examination by 12:30.

The Court:
I think we will adjourn until a quarter of two.

Mr. Harris:
All right, sir.

The Court:
Court is adjourned until fifteen minutes of two o'clock.

(Whereupon at 12:10 P. M., July 16, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess—1:45 P. M.

The Court:
The witness will come around.

1524 T. C. DeSOLLAR thereupon resumed the stand and having been previously sworn, testified further as follows:

Cross Examination.

(By Mr. Harris):

Q. Mr. DeSollar, were you born in this country?

A. I was; Denver, Colorado.

Q. Denver, Colorado?

A. Yes, sir.

Q. You have made a general study of the iron ore situation in the Birmingham district, haven't you?

A. Well, in a general way, yes, sir.

Q. And the ore beds that the Sloss, the Woodward, The Republic and the Tennessee Companies are mining are all part of one general ore bed, aren't they?

A. Yes, sir.

Q. And that ore bed extends for about seventy miles in length and about ten miles in width, doesn't it?

A. Approximately so.

Q. And the conditions in the Birmingham district with reference to the production of steel, so far as the natural resources are concerned, are the most favorable of any location in America, aren't they?

A. Considered very favorable.

Q. And when it comes to competition with other steel producing districts in America, the Birmingham district is in the fortunate position, and it alone is in the fortunate position, of having the ore, the coal and the limestone rock all deposited by nature so that there is practically no transportation, isn't it?

A. That is correct.

Q. In the other iron ore districts, such as the Lake Superior District, they have to haul the ore a distance of a thousand miles from the place where they take it out of the earth to the furnaces?

A. I couldn't tell you the distances, but they have to transport it some distance by boat.

Q. Yes. You stated that the Woodward Company was digging a vertical shaft?

A. They have a vertical shaft.

Q. They have a vertical shaft?

A. Yes, sir.

Q. Well, there have been two vertical shafts in the Birmingham district for some years, haven't there?

A. That is correct.

Q. And in addition to two vertical shafts, there has been a very steep shaft, different from the slope mines you have discussed this morning?

A. That is correct.

Q. Now, is there anything in the formation of the earth that would prevent the Tennessee Company from digging a vertical shaft or the Sloss Company from digging a vertical shaft?

A. That is a question I can't answer about some other company. I don't know what it is about.

Q. I say the nature of the formation of the earth.

A. Yes.

Q. Here on this—they are all mining out of one ore bed?

A. Yes, sir.

Q. You said that?

A. Yes, sir.

Q. Now, is there any geological reason why, in the holdings of the Tennessee Company or of the Sloss Company or of the Republic Company that their engineers couldn't sink a vertical shaft just the same as the Woodward Company is able to do or has done?

A. They may have considerable resources right ahead of their present workings, and, therefore, it is a different problem.

Q. Therefore, it would be more economical to them to go ahead than it would be to sink a vertical shaft; that is what you mean?

A. Approximately so, yes.

Q. Yes. Now, I understood you were hurt and quit work. When was it you got hurt?

A. On March 14, 1940.

Q. Were you in an automobile accident?

A. No, sir. I was hurt in the mine.

Q. You weren't at the face drilling, were you?

A. No, but I was in the process of an inspection trip.

Q. That is—Were you making a safety inspection, and while making a safety inspection you were hurt in an ore mine?

A. In one sense of the word: We had a tight place. We called ahead to find out if it was safe to go ahead, and we were told it was. I went ahead, and due to a human error, I was crushed between a car and a rib.

Q. Well, it was a human error because—

Mr. All:

We don't object, but I don't see its materiality.

The Court:

He hasn't asked his question yet.

Q. It was a human error plus the physical conditions in an ore mine that joined to give you your injury, wasn't it?

A. No, sir.

Q. What was the physical thing that hurt you?

A. I was on the narrow side of a trip of cars that was in the rib—by the rib. It was a squeeze. If I hadn't had quite as much avoirdupois I would have made it O. K. I had plenty of room had the trip not been moving, but it so happened I was caught in a tight squeeze and I didn't have a chance to move and I was caught and injured.

Q. As a matter of fact, Mr. DeSollar, due to the slate formation of the top in the Birmingham district, there is an ever present danger of falling rock to men in mining, isn't there?

A. That is correct.

Q. And the mines, three years ago, some of them extended back as far as 14,000 feet underground, didn't they?

A. Something like that, yes, sir.

Q. Did any of them go back as far as 19,000 feet, or do you recall?

A. Yes, sir. You have an article I wrote a number of years ago. Shannon was something like that.

The Court:

What is that?

The Witness:

That was Shannon.

Mr. Burr:

That is the vertical mine on the mountain.

Q. Is that the one that went back 14,000 feet from the outcrop?

A. I wouldn't answer you at this time definitely on that. I just don't know.

Q. How far did the Woodward mine go, the furtherest distance underground?

A. I would say around 8700 feet. You understand I am answering approximately. I don't remember exactly. I don't remember the year I wrote that.

Q. Now, due to the formation, the geological formation, the ore deposits and the top over them in the Birmingham District, water seeps from the sandstone or bed—sandstone band above the ore deposit down in the mines, doesn't it?

A. Up at the old workings, the upper workings where the top has been crushed or mined through extensively.

Q. Are the old workings above or below the present workings?

A. They are decidedly above in the horizontal scale, but in the same ore body.

Q. And three years ago there has been, or maybe more than three years ago when you wrote your article, for every ton of ore that was taken out of the mine they would average pumping out from 2.3 to 6 tons of water, wouldn't they?

A. I think that is in the article. At that time it was approximately correct.

Q. Well, I will read the article:

"From 2.3 to 6 tons of water is pumped for every ton of ore that is hoisted in the district."

A. If I put that in that article it was true.

Q. And the old workings are higher than the later workings in the horizontal plane?

A. Yes, sir.

Q. Now, during the time you have been in the Birmingham district there have been many changes in ore mining, haven't there?

A. Many changes in ore mining?

Q. Yes.

A. Not many changes. They have had changes.

Q. One of the greatest changes was the introduction of mechanical loaders, wasn't it?

A. Yes, sir.

Q. And as a result of changes and improvements in ore mining operations the production of tons of ore per man hour has increased from year to year, hasn't it?

A. Yes, sir.

Q. So that, in the old days before you had these mechanical loaders a man hour would produce about three quarters of a ton of ore, wouldn't it?

A. Well, I couldn't answer you right off-hand on that.

Q. Well, approximately? Is that about right?

A. If it is stated in that article, it is correct. To hear you state it, I don't remember it.

Q. You mean you don't know whether I am reading it correctly, do you, or not?

A. I do not, no, sir.

Q. Well, you can count on it that I am.

And with the use of the mechanical loaders the production per man hour has increased many times, hasn't it?

A. That is correct, yes, sir.

Q. Now, what mine was it, at the time that you wrote this article, that had the two vertical shafts?

A. The Woodward Iron Company.

Q. Where were they?

A. One is at Redding or Sango, and the other is the Pyne shaft.

Q. And this article bears the notation down at the bottom, "Mining and Metallurgy, 1937." Was the Pyne shaft operating then?

A. No, sr, the Pyne shaft was not operating, and the Redding shaft, I think, was closed in 1936 or 1937.

Q. Now, do you know whether the Tennessee Company is sinking a vertical shaft anywhere else?

A. No, sir, I know nothing about it.

Q. Do you know anything about the cost of sinking a vertical shaft?

A. Only in a general way.

Q. Are you—have you been out of work since you were injured in 1940?

A. No, sir. I went back to work—I think I returned to work on the first of July.

Q. 1940?

A. 1940, yes, sir.

Q. As superintendent of mines?

A. I am superintendent of mines, but I have been engaged exclusively in getting ready to open up the new Pyne property.

Q. As superintendent of mines of the Woodward Iron Company, did you have anything to do with the contracts that the Woodward Iron Company entered into with the union?

A. No, sir, only as a relay agent.

Q. As a relay agent, were those original contracts turned over to you?

A. I saw the original—I saw what the union proposed and I transmitted that on through.

Q. You haven't a copy of the Woodward contracts with you?

A. No, sir.

Q. And you—Could you tell the Court whether or not the Woodward contract that has been in force since the Fair Labor Standards Act went into effect contains any clause that the working place or face to face work shall determine the time?

A. I don't recall of anything where face to face was brought into it until 19—the contract in late 1940. That was the first time that was ever introduced.

Q. Neither was the words "working place" used in the contract, was there?

A. I think in one contract proposed several years ago it stated—

Q. I am talking about the contracts entered into, not proposed.

A. No, sir, nothing about the face to face.

Q. That is right. Now, is the Woodward Iron Company the smallest of these four companies from the standpoint of magnitude of ore operations, or does it come next to the Tennessee Company?

A. Well, I am of the opinion that we are about second.

Q. How would you rank them in amount of ore production and the number of men employed? The Tennessee Company is the bell weather of the flock, and then the Woodward is next, and then which is next, Republic or Sloss?

A. I couldn't answer you that now. I would refer you to the United States Minerals published by the Bureau of Mines. They can give you that information.

Q. What—you mean you refer to the Bureau of Mines?

A. They have that, the iron produced. They have the tonnage of ore actually produced.

Q. Do they issue a year book?

A. You can buy it.

Q. Sir?

A. You can buy it.

Q. Do they tabulate each year—

A. Yes, sir.

Q. —in the yearbook—

A. Yes, sir.

Q. —the production of iron ore in this district?

A. Well, by companies, not by mines.

Q. Do you know whether those books are usually kept in the public library?

A. I couldn't answer you that.

Q. You couldn't answer that?

A. I sent to the superintendent of documents.

Q. Now, the Woodward Company didn't have three different groups of mines as the Tennessee Company has; the Tennessee Company had the Wenonah Division, the Ishkooda Division and the Muscoda Division, but the Woodward Iron Company had just one mine, didn't it?

A. When I went to work for Woodward in 1924 the Sango mine was operating.

Q. Yes, sir.

A. That was the Sango Division.

Q. Did they have the reputation then of being the greatest single individual producing ore mine in the world?

A. I couldn't answer that.

Q. You don't know how it ranked?

A. I couldn't answer on Sango.

Q. Now, I noticed you used the words "pit mouth" three or four times in response to Mr. All's questions.

Pit mouth is not the word commonly and generally used in this district?

A. No, sir.

Q. What was the occasion of you constantly saying pit mouth in this district?

A. I can answer you that. The nomenclature in ore mining in Alabama is very closely allied with coal mining. Being associated with coal miners all my life, I hear the word pit mouth, and I unconsciously go into that language. It is the collar of the mine.

Q. The mouth of the mine is the word used here?

A. Yes, sir.

Q. It is also called the portal?

A. That is right.

Q. The map you put on the board, or which was put up there for you, is that the way iron ore maps are usually made?

A. Yes. That is reproduced. Our scale is around 100 feet to the inch.

Q. Well, I notice that map starts in from the top and goes to the bottom—

A. No.

Q. And some other maps that were put up started in at the bottom and went to the top. Now, which is the way that maps of iron ore operations are made; which is the standard way?

Mr. Burr:

We object to that question. We don't see the use of trying in this case questions of that sort of encumbering the record with them.

The Court:
Overruled.

Q. The Court says you may answer.

Mr. Burr:
Mr. Harris and Mr. Cameron—Did Your Honor overrule the objection?

The Court:
Yes, sir.

Mr. Burr:
We except.

A. I think I can explain that. I think that is a more or less little idiosyncrasy of my own.

Q. I didn't ask that. I just want to know what is the way they are usually made?

A. It doesn't make a particle of difference.

Q. At the Woodward mine when you lower the men into the mine and hoist them out of the mine you have two skips—

A. Yes, sir.

Q. —loaded with men?

A. No, sir. We have one skip going down and one coming up, and they hoist in balance.

Q. You have a double track slope?

A. That is true.

Q. It is like the old fashioned well pulley where you had two buckets over a pulley and when one went down the other came up?

A. That is essentially correct.

Q. Nobody has described yet the condition of the skip that the men rode in at Woodward Iron Company. How long is the skip, the part the men occupy?

A. The skip is 12 feet long and 4 feet wide, inside dimensions.

Q. How high is it?

A. It is five feet nine inches in the front, and four feet eight inches in the back. It has a little shoulder on the back about eighteen inches high.

Q. How do the men get in? Does it have a door in the side like an automobile, or do the men have to jump down in the skip?

A. Where the men get on there is a little raised platform and they step from there to the bail of the skip and throw their leg over and jump down in the skip.

Q. That skip at Woodward is not used for anything but hauling the men?

A. No. When the men are in the mine then the man car attached to the skip is removed and then we use the same skip for handling ore.

Q. But the man car is not used for handling ore?

A. No, sir.

Q. The ore car used for hauling ore makes one trip or three trips hauling men, and then goes back to work hauling ore?

A. That is correct.

Q. I am talking about the skip hauling men. They put their foot over the bail?

A. Yes, sir.

Q. And then leap down in there?

A. Throw their leg over.

Q. Well, when they get down in there, is there anything for them to sit on?

A. No, sir.

Q. Do you have any sort of cushions or place for them to kneel on?

A. No, sir.

Q. Is the floor level from one end of the skip to the other?

A. It is on the incline or the pitch of the slope.

Q. Well, when you get the floor out on the ground or horizontal earth, does the track—

A. The back end would be up just a little bit. It practically takes a position parallel to the particular track at that particular place.

Q. Yes. Now, when those men get in this skip that is four feet five inches in front, and four feet nine inches, I believe you said, at the back—

A. That is right.

Q. How many men get in that skip?

A. 16.

Q. What?

A. 16.

Q. 60?

A. 16.

Q. 16?

A. Yes, sir.

Q. Well, those men, in riding down into the mine in that skip and in being hauled out of the mine in that skip have to assume a crouching position to keep their heads from being knocked off, don't they?

A. The first—about the first hundred and fifty feet there are some steel timbers that were put in to protect the roof overhead, and after that a man can stand up on top of a skip and not be touched. There is plenty of room.

Q. Have you ever ridden down on a man trip with them?

A. Thousands of times.

Q. It is customary for the men to stand erect?

A. Sometimes they stand erect and sometimes they sit down. It just depends on how many are in the skip.

Q. You used the phrase this morning in response to a question of Mr. All, "The contractors' motor trip."

What do you mean by the phrase "contractors'"—

A. I mean the contractor or the head miner.

Q. Well, what do you mean by a contractor? What did a contractor do at the Woodward Iron Company?

A. Up to 1939 we had the contract system.

Q. You did? What was it?

A. The men—the contractors got so much per ton for the ore.

Q. You mean— We will take Contractor Number 1 and Contractor Number 2. Say one is working in 72 right and one is working in 72 left,—did you have them numbered that way?

A. Well, we don't go by our numbers—

Q. Suppose the contractor in 72 right produced during a shift 168 tons of ore, and the contractor right across the slope in the same horizontal plane produced 128 tons of ore. Up to 1939 did the contractor who produced the 128 tons of ore get as much pay as the contractor who produced 168 tons?

A. No, sir. He got paid by the tons that he ran,—that he ran.

Q. Well, did the men who worked under the contractor who produced 128 tons get as much pay as the men who worked under the contractor who produced the 168 tons?

A. Absolutely, yes.

Q. Over what period of time?

A. From 1924 on, I know, and prior to that time I know nothing.

Q. How was their pay computed from the standpoint of tonnage?

A. By the day and hour.

Q. From 1924 up until 1939?

A. Correct.

Q. So that it didn't make any difference—didn't make any difference to a man's earnings from 1924 to 1939 whether he produced more ore or less ore then?

A. Are you talking of the contractors or are you talking of the individual man?

Q. I am talking of the individual men in the contractors' crews?

A. Didn't make a particle of difference. The chances are if there was that big a discrepancy and there wasn't any reason for it there would be a change. It might be due to the conditions underground—

Q. How did the Woodward Iron Company know how much ore each miner produced?

A. Everything was hoisted across the scales for each contractor,—head miner.

Q. How did the Woodward Iron Company identify his ore so they knew where it came from?

A. It came from a certain place, 9 right or 10 right. Usually the marked their cars, and to corroborate that, the chainer bringing it up would say, "Nine right," or "Ten right".

Q. Where was that?

A. Down underground.

Q. How far was that from the unloading station?

A. Are you talking of the top unloading station?

Q. Well,—

A. You heard me say something about going under the tunnel, 1035 feet?

Q. Yes.

A. Well, about 75 feet above there is where the scales were located.

Q. Well, when was it that the Woodward Iron Company put in a clock so the men punched a clock when they went in and punched it when they came out?

A. Around May 1, 1941.

Q. What method did the Woodward Iron Company have of keeping track of the actual time that the miners were in the mine prior to the time they put in the clock?

A. Each head miner prepared daily, of the men he had working for him,—he prepared an abstract and signed it, and that in turn was taken up by the section foreman or the mine foreman, and he O. K'd it, and from then on it was relayed to the time office. If it was a service crew

it would be a track foreman or timber foreman, or whatever it was.

Q. So, then, the matter of keeping the time of the men who were in a production crew was a matter that affected the independent contractor? He was the one that was responsible for keeping the time and seeing how much time the men got paid for, wasn't he?

A. Yes, sir, but when he turned in an abstract it was always eight hours unless a man was sick or taken out of the mine, and then it would be noted.

Q. You said when he turned in an abstract it was always eight hours?

A. After—I will qualify that. Sometime after May, 1931, we went on the eight hour system, and any time after May, 1931 it was always eight hours.

Q. He always turned in eight hours?

A. Yes, sir.

Q. Suppose a man wasn't there but seven hours; did he turn in eight?

A. He would get his eight.

Q. Suppose he was there nine and a half hours; did he get eight hours?

A. They didn't happen.

Q. Whether he was there eight hours or not the contractor turned in eight?

A. Yes.

Q. How many years did that go on?

A. All the years I have been there these abstracts have been turned in.

Q. That was from 1926 until—down until the present time. Now, the contractor—you used the phrase this morning, "Everything was sold by boxes".

A. Boxes of dynamite; cases of dynamite if you want to call it, cases.

Q. Now, the Woodward Company sold the carbide to the men if they wanted to buy it?

A. Yes, sir.

Q. And then—or did it sell it then—sell the carbide to the contractors?

A. They sold the carbide to the contractors and the contractors issued the carbide to the men.

Q. So you didn't have any system for a number of years whereby the man would come up and get a can of carbide from the Woodward Iron Company just before he entered the man skip?

A. No, sir.

Q. Do you have that system now?

A. I understand that they do, yes, sir.

Q. Well, don't you know?

A. Well, I haven't been up on—that is an operating detail, and I haven't been in it.

Q. How long has it been since you have been up on the operations we are talking about?

A. In a general way all the time. I do know they are issuing carbide in cans up there.

Q. All right. Have they now started the system of giving each miner—every employee a brass check he turns in, or do you use entirely the clock system?

A. We use the clock system.

Q. You don't have any brass checks?

A. We had the brass check up until the time we started using the clock system, but that brass check was not to identify the man's time or anything like that. That was a safety measure.

Q. You never had, until the clock was put in on May 1st,—you never had any system which the Woodward Iron Company itself operated whereby you checked in the men?

A. Yes, there was a check-in man from 1904 until the depression.

Q. Then—

A. At the beginning of the depression.

Q. You were not with them from 1904 up to the depression?

A. 1924. I went with them in '24.

Q. You didn't go with them until 1926?

A. I went with them in '24.

Mr. Burr:

You have him confused with Scott.

Q. You quit the system sometime about 1933?

A. Somewhere along there.

Q. You didn't issue them until you started the clock system?

A. No, sir. We had a system in 1939 as the men came by they would deposit the checks in what I will call a milk can, and those checks were put on a board numerically numbered, and then in the afternoon when the men came out of the mine they took their checks off the board and went home.

Q. From 1933 to 1939 you did have the milk can system of checking in?

A. No, sir.

Q. The agitation for the eight hour day—rather, the Union men in the Woodward Company in 1938 and 1939 were agitating a portal to portal arrangement, weren't they?

A. No, sir.

Q. Did you have any discussion with them along in 1933 and '34 about any portal to portal?

A. No, sir. They came in with a proposed contract consisting of 22 demands in 1934 and there in that case—in those demands they wanted seven hours,—35 hours a week.

Q. And then when the company refused to give them seven hours and 35 hours a week they brought up the question—a counter proposition of entering on their time and leaving on the company's time?

A. Not at that time.

Q. When was the time in the negotiations they brought up the question of entering on their time and leaving on the company's time?

A. I think that was 1939. I wouldn't make a positive statement.

Q. You wouldn't be positive?

A. No.

Q. And you know that the check-in system was instituted after the Wage and Hour Law went into effect, this placing checks in the milk can?

A. Yes, but it wasn't—it never was considered a check in system. It was a safety system.

Q. It wasn't a system to determine the time of the men, but a mere system to determine, if there was an accident—

A. If a man—

Q. —whether any particular man was cut off—

A. Correct.

Q. —down at these workings?

A. Correct.

Q. Now, the Woodward Company has its repair shops down underground, haven't it?

A. The car repair shop, the blacksmith shop, the drill repair shop, the drill sharpening shop are underground.

Q. Now, that is not the case as to the other mines in this district, is it?

A. Not that I know of.

Q. Yes. In 1933, was the time when the union was organized in this district, isn't it?

A. Well, it was shortly after the N. R. A. Article 7, clause 7. I think it was in the fall of 1933.

Q. Yes. And in 1934 you were familiar with the discussions going on between the Woodward Iron Company and its employees, weren't you? You acted as intermediary, you say?

A. Yes, sir.

Q. Well, in 1934, the company did not sign a contract with them, did it?

A. No, sir.

Q. But it did use the device of writing a letter to Madam Perkins, the Secretary of Labor?

Mr. Burr:

Wait just a minute. We object to that form of question. If he answers that in the affirmative you have a witness saying they adopted a device by writing to them. I object to the form of the question.

The Court:

Sustained.

Mr. Burr:

All three parties used it.

The Court:

Sustained.

Q. Did they write a letter to Madam Perkins, Secretary of Labor?

A. It is my remembrance they wrote a letter to a Mr. Richardson, who was a Labor Conciliator.

Q. Then in 1935 the union again asked for a contract, didn't it?

A. Yes, sir.

Q. And the company refused to enter into a contract with them?

A. That is my understanding.

Q. Then in 1936 the union again demanded a contract, didn't it?

A. They requested a revision.

Q. And the company did not sign a contract with them, did it?

A. No, sir.

Q. And in that year did they again write a letter to Mr. Richardson or Madam Perkins in Washington?

Mr. All:

If the Court please, we have those minutes here. There is no use in going into that. We are going to introduce the negotiations by the next witness.

The Court:

Well, he wants to know something about it.

Mr. Harris:

How do I know what they are going to do?

Mr. All:

I don't want oral testimony of the contents of written instruments.

The Court:

He is just asking if it was done. He is not asking for the contents.

Answer the question.

The Witness:

What was the question?

The Court:

Read that question.

(Thereupon the reporter read the question last propounded as above recorded.)

A. No, sir.

Q. In 1936?

A. No, sir.

Q. Did they sign—

A. I think that they asked for a revision, and I think the letter was addressed, confirming the formal letter to Mr. Richardson, but was addressed to the—I think the Chairman of the Negotiations Committee.

Q. All right. Then, in 1937, did the Union ask for a contract with the Woodward Iron Company?

A. They asked for a revision of the existing—

Q. Well, did they submit a form of contract?

A. Yes, sir, the Union did.

Q. The Union did?

A. Yes, sir.

Q. Well, did the company sign that form of contract that was submitted?

A. No, sir.

Q. Did they sign any contract at all with them in 1937?

A. I would not make a positive statement. 1937 or '38, they did, but I am not sure what year.

Q. Not sure whether it was '37 or '38?

A. '37 or '38.

Q. You don't recall that the Woodward Company eighteen years before the Fair Labor Standards Act went into effect them for the first time entered into a contract with the Union?

A. I do not know anything about the time element, because if there was anything on, there was no thought—

Q. What is that?

A. If anything was entered into, nothing was ever thought or considered about it was a violation of the—

Q. I didn't ask you that. I just asked you as to the time.

A. I do not know—

Q. I never asked you what you thought.

A. I do not know what the date was.

Q. One question, and I think I will be through, to develop some information on the Bureau of Mines you

brought out. Do you know whether the Bureau of Mines of the United States made studies of the operations in the Birmingham district?

A. There have been a number of reports by men connected with the Bureau of Mines covering a period of twenty odd years from, I think, 1912 on, and those bulletins would be available at the Bureau I am almost sure —at the Superintendent of Documents.

Q. Superintendent of Documents?

A. Yes, sir.

Q. Of the Government at Washington, D. C.?

A. Washington, D. C.

Mr. Harris:

All right, I believe that is all, Your Honor.

Re-Direct Examination.

(By Mr. All):

Q. Mr. DeSollar, just a question or two. Mr. Harris asked you about the contract system, and I believe you stated that when you came there they had a contract system?

A. Yes, sir.

Q. And they had it up to when?

A. They had the contract system until 1939.

Q. Until 1939?

A. Yes, sir.

Q. Well, what—You say the contractor was paid on a tonnage basis?

A. Yes, sir.

Q. Was there any guaranteed compensation for the men working for the contractor?

A. Yes, sir, there was the base pay.

Q. The base pay?

A. Yes, sir.

Q. That was for the men working for the contractor?

A. For the men working for the contractor.

Q. All right. Now, with respect to the service crews, how were they worked?

A. They worked on straight base pay.

Q. Straight base pay?

A. Yes, sir.

Q. You mean by the hour or by the day?

A. Well, hour and day,—hour rate.

Q. Hour and day, but it was a base pay?

A. It was a base pay.

Q. At that time particularly you say there was no premium paid the men beyond that—the men working for the contractor based on the tonnage?

A. Not in 1924.

Q. Not in 1924?

A. No, sir.

Q. When did the men get some addition, based on tonnage, if such a change was made?

A. In 1934 we revised our wages, and we made that distribution. The contractors were beginning to make pretty good money, and we made a redistribution of which the men all participated in that, and they usually jumped 2 cents per hour per man.

Q. Was that 2 cents per hour they got translated into the added rate on the guarantee?

A. Yes, sir.

Q. Because—Added onto the hourly rate on the guarantee?

A. Yes, sir.

Q. How long did that exist?

A. That existed—That existed right up through until 1939.

Q. 1939?

A. Yes, sir.

Q. What change, if any, was made at that time in that respect?

A. The contract system, as called, was changed and made over to the—the contractor is now called the head miner.

Q. All right, sir. Was that matter of premium based on tonnage treated further?

A. Yes.

Q. And that—

A. Twenty percent goes to the head miner, and 80 per cent is divided among the men.

Q. What I mean by that, was there a fund distributed of the premium as between the contractor and the men?

A. I don't quite understand it.

Q. I will ask it this way. I will let you state it in your own way. What change was made in 1929 as to the participation in the excess tonnage over the base?

A. In 1939 the head miner—

The Court:
Is that what you mean, 1939?

Mr. All:
Yes, sir.

The Court:
You said 1929.

Mr. All:
What I mean is 1939 when the change was made.

A. The head miner gets twenty percent of the profit over the base rate, and 80 percent goes to the men, and it is divided among the men in proportion to their rates.

Q. Was that an additional premium given to the head miner, raised the premium pay?

A. Yes, sir, it raised the premium pay.

Q. Raised his participation in premium tonnage?

A. That is correct.

Q. When was the incentive system or any sort of incentive system put in at Woodward, Mr. DeSollar?

A. I would say the incentive system went in in 1934 when we began stepping up the base pay of the individual contractor's men.

Q. All right. Now, Mr. DeSollar, can you tell us.—I would like for you to do so if you can,—what was taken into consideration in arriving at your eight hour day, we will say. I mean in—I am pretermitting any consideration of the change from ten hours to nine and from nine to eight, but the eight hour day, what relation did that have to the base tonnage involved in the incentive?

Mr. Harris:

Of course, we objected to that before, and I believe Mr. Ball put the figures up there on the board showing that. My idea, Judge, the factors which one side takes into account in their own manipulations and calculations—

The Court:

Sustain the objection.

Mr. Harris:

Yes, sir.

Mr. All:

What did you say?

The Court:

Sustained.

Q. I will ask you how—what relation your base tonnage has to your policy of eight hours a day?

Mr. Harris:

Oh, we object to that, if the Court pleases.

The Court:
Sustained.

Mr. All:
We except. Your Honor, I am going to ask this question. I want to state what I have in mind, if the Court pleases, and that is that the eight hours per day for these crews was based on the normal tonnage which an average good crew should produce in the course of the eight hours,—

Mr. Harris:
And we—

Mr. All:
And that was the basis of the fixing of the eight hour day.

The Court:
All right.

Mr. Harris:
And we object to it, if the Court pleases.

The Court:
Overruled.

Q. I want to ask you that. How did you arrve at your eight hour day in connection with your base tonnage?

Mr. Harris:
We object to that, if the Court pleases.

The Court:
Overruled.

A. I don't know that I can answer you that question direct.

Mr. Harris:
I object to him speculating, Judge, if he can't answer it.

The Court:
If he can't answer it, that is the end of that.

Q. What do you mean by direct?
A. From one ton to 180 was our first group.
Q. Was what?
A. Our first group of tonnage that they paid a certain rate per ton.

Mr. Harris:
We object to that.

The Court:
What is that?

Mr. Harris:
We object to that.

The Court:
Can you answer the question? If you can, answer it.

The Witness:
I can't tell you how it was arrived at.

Mr. All:
He is answering my question.

Mr. Harris:
He just said he couldn't.

Mr. All:
He is answering it.

A. I can't state how we arrived at the 180 tons other than it was experience.

Mr. Harris:
We—

Mr. All:
That is what I am askng for, his experience; that is the very—

Mr. Harris:
If the Court pleases, he indicates all he knows is they based on experience—what that experience is, what those elements were. I judge he doesn't know. He just says using experience as a guide they fixed that number of tons.

The Court:
I thought he—

Mr. All:
Well, experience is about the best guide that any of us have got in anything.
While he said he didn't know, he does know, and his answer indicates he does.

The Court:
I will let him answer it.

Mr. Harris:
We except.

A. One ton to 180 tons—

The Court:
Sir?

The Witness:

Then, from 181 tons to 210 tons we stepped up that rate per ton.

One ton to 180 tons we had a certain rate per ton.

Then, from 211 to 240, and then from 241 to 270, and from 271 to 300 tons, and then from 301 on there were corresponding rising rates per ton.

Q. Well, how did you arrive at the 180 tons as your first base?

A. Well, that 180 was—

Mr. Harris:

The same objection, if the Court please.

The Court:

I understand you object.

Mr. Harris:

To all these.

The Court:

The same ruling.

Mr. Harris:

Yes, sir.

A. —was about forty tons under the normal production, so we had to establish a minimum.

Q. What do you mean by under normal production?

A. Well, our average drag tonnage for the large drags was around 210 tons.

Q. For what period?

A. Per day.

Q. What hour day?

A. Eight hours.

Q. All right. Now, go ahead.

A. With that for a basis we knew we could not put it on top, and we cut that down to 180 tons.

Q. And that is also the way you have arrived at your eight hours a day?

Mr. Harris:

We object.

A. No, that was the tonnage we produced. We had produced several years on eight hours, so we had a chance to get several years experience.

Q. On eight hours?

A. Yes, sir.

Q. Mr. DeSollar, you said that under—in some of these earlier years you knew something about the negotiations in your answers to Colonel Harris.

With respect to 1934, you said that the negotiations that year were concluded by a letter written to a man named Richardson?

A. Yes, sir.

Q. I will ask you if that is a copy of the letter you referred to in answering that question?

A. Yes, sir, it is a copy of the letter?

Q. That is a copy of the letter?

A. Yes, sir.

Mr. All:

Have you seen this?

Mr. Harris:

I don't know whether I have or not. Probably I haven't.

Mr. All:

I want to introduce it in evidence as an exhibit and mark it the proper exhibit.

The Clerk:
24.

Mr. Harris:
You see, I haven't studied the Woodward witnesses or the Woodward documents or anything about Woodward.

The Court:
That is 24?

The Clerk:
Sloss Exhibit 24, yes, sir.

(Thereupon a document dated Woodward, Alabama, July 6, 1934, addressed to Commissioner C. L. Richardson, Representative of Secretary of Labor, United States Department of Labor, Birmingham, Alabama, and signed H. A. Berg, President, attached to which is a sheet listing various occupations in the Red Ore Division of the Woodward Iron Company, with "Present Hourly Rates," "Proposed Hourly Rates", and "Hours," was marked Sloss Exhibit No. 24.)

The Court:
What was that?

The Witness:
That was the letter sent to Mr. Richardson.

The Court:
That is a letter, is it?

Mr. All:
Yes, sir.

Mr. Harris:

That is the letter of understanding, you call them, and Your Honor will recall I objected to similar documents yesterday or the day before.

The Court:

Yes, sir.

Mr. Harris:

And I assume I still have the objection and exception to all these.

The Court:

Yes, sir.

Mr. All:

You have the copy there to substitute, have you?

The Clerk:

Yes, sir.

Q. Mr. DeSollar, do you recollect that time was the time of the general strike on Red Mountain?

A. In 1934 all the Red Ore Mines on Red Mountain were out on strike.

Q. Do you remember about what time they went out,—about what time?

A. Redding ore mine went out on May 4th and returned to work on July 6th.

I think the T. C. I.—I think they all went back the same time. I think T. C. I. went back the first one. I will not say about Sloss.

Q. They all went back the same time?

A. No, there were several weeks elapsed.

Q. Several weeks between them?

A. Yes, sir.

Q. Do you remember who this man Richardson was and where he came from down here?

A. He was a representative of the Government and came down from Washington.

Q. Do you remember whether or not shortly after these letters were written the men went back to work?

A. I am of the opinion that there was a week or two that elapsed before they went back to work, before it was thoroughly agreed, but I can't make you a positive statement with reference to that. I had nothing to do with that.

The Court:

What year was that?

The Witness:

1934.

The Clerk:

July 6, 1934, this letter was dated.

Q. Mr. DeSollar, you said something about being an intermediary receiving proposals in 1934, didn't you?

A. Yes, sir.

Q. I hand you a paper here that is dated April 13, 1934,—

Mr. Burr:

What is the date of it?

Mr. All:

April 13, 1934, dated at Bessemer, Alabama.

Q. It seems to have been addressed to Woodward Iron Company. Woodward, Iron Company, it looks like to me is in original type, and the other looks like it is a typed copy.

What is that, and state whether or not that is what you referred to in your answer to Mr. Harris' question?

A. Yes, sir, 22 requests. This was given to me, or a copy of that was given to me by a man by the name of Pat McGraw, who was president of the Local Union at that time, and I had thirty minutes to read it and had to get it over to the main office.

Q. You did get it over—

A. I just glanced through it.

Q. Do you know whether or not that proposal was the same proposal that had been presented to the other ore mining companies in the district?

Mr. Harris:
We object to that; he can't know.

Mr. All:
I am asking him if he does know.

The Court:
They will speak for themselves, Mr. All.

Mr. All:
Well, I introduce this as—

The Clerk:
Sloss Exhibit Number 25.

Mr. All:
Sloss Exhibit 25.

(Thereupon a document dated at Bessemer, Alabama, April 13, 1934, addressed to Woodward Iron Company, attention Mr. H. A. Berg, President, in re Woodward Red Ore Mine Division, and signed J. B. McGray, Ben Winston and G. R. Vines, and bearing the seal of Lipscomb Red Ore Local No. 103 of the International Union of Mine,

Mill & Smelter Workers, was marked Sloss Exhibit No. 25.)

Q. Mr. DeSollar, just to see if I am correct, you stated with respect to the man trip—did you give the dimensions of the cars that the men went down in at Woodward, both the dimensions of the skip part of the trip and the specially made—specially built man car part of the trip?

A. I didn't, but I can give it.

Q. If you will do that, I will appreciate it.

A. The man car in use prior to May 1, 1941, was 21 feet long, 63 inches wide and had 11 seats.

Q. Eleven what?

A. Eleven seats.

Q. How many men rode in that car?

A. Forty-four men.

Q. Did they sit down or stand up?

A. Sat down.

Q. I will ask you, Mr. DeSollar, have you made any sketch or calculation or test from which you can say whether or not that so far as the crowding was concerned, it would accomodate the men comfortably?

A. It is not crowded at all.

Q. It is not crowded at all?

A. The floor,—there is about 7 10 square foot per man.

Q. You didn't give us the dimensions of the skip.

A. The skip is 4 feet inside dimension, and 12 feet long.

Q. Did you state how many men ride in that?

A. Sixteen.

Q. Sixteen?

A. Yes, sir.

Q. Is that comfortable in so far as being crowded is concerned?

A. Yes, sir. That is even more so than the other.

Q. To be sure we cover the ground, am I correct in stating from your examination you say there was a part of that trip where the men were forced to stoop over?

A. Yes, sir, about—between 100 and 150 feet is what we call the low bridge.

Q. Is that where they leave the collar of the mine?

A. Yes, sir.

Q. That is about 150 feet?

A. Yes, sir.

Q. Can you make any estimate of the time it requires that car to go that distance?

A. Oh, I will say between 30 seconds and a minute,—a very short interval of time.

Q. With respect to the brass check, the check in going to work, you say, was put in a milk bucket and then put on the board?

A. Yes, sir.

Q. You said that had no reference to work time, but was some sort of a safety proposition?

A. Yes, sir.

Q. In what respect—how did it work out as a safety proposition?

A. Well, when a man came out of the mine he was supposed to take that check off the hook, and then the last foreman coming out of the mine examined this board, and if there was some checks on the board, and he didn't have the understanding there was some track crew or timber crew working over time, it was his duty to investigate it or report it.

Q. When the last man to report had come out, what was indicated by these checks being left on the board?

A. That there were men left in the mine.

Q. Then what would be done?

A. The chances are they would notify the next shift, which was going on simultaneously there were certain men missing, and they would check up.

Mr. All:

Yes, sir. (To Mr. Burr): Mr. Burr, do you want to ask him anything?

Mr. Burr:

Yes, sir, there are one or two questions I want to ask him.

(By Mr. Burr):

Q. Mr. DeSollar, you spoke of the head miner keeping a daily abstract of time that was turned in and finally reached the office, and you told Mr. Harris that was kept on an eight hour basis.

A. Yes, sir.

Q. If a man was there at his working place or in the mine, not counting transportation, of course, less than eight hours, he still got the eight hour pay or not?

A. He got his eight hour pay unless it was a case when he was injured or of sickness.

Q. He did if he was there at work?

A. Yes, sir.

Q. If he worked overtime did he get his overtime?

A. Yes, sir.

Q. How was that paid?

A. Time and a half.

Q. Time and a half?

A. That might be a supplementary abstract would come in on the next day—

Q. That is what I was going to ask you. Did you have a form for a supplementary abstract?

A. Yes, sir.

Q. I don't know whether I understood you or not with reference to Sloss Exhibit 25. That is the one you identified as having 22 requests handed in to you.

Did you sit in with the negotiations committee on those requests?

A. I was there but once.

Q. I will ask you the time you were there did anyone bring up in the meeting you attended—bring up the request they be given transportation time?

A. To tell you the truth, Mr. Burr, I couldn't answer that.

Q. Don't remember whether it was or wasn't?

A. No, sir.

Q. Now, the Sloss Exhibit 24, which I think you referred to as the letter to Mr. Richardson, did you sit in on the negotiations—

A. No, sir.

Q. Then, I won't bother you about that one, then.

You referred to Mr. Harris to an incentive—an additional incentive that the Woodward Company added to the wages, the compensation of the men in April, 1939—is that the correct date?

A. What?

Q. When you changed the plan and added an additional incentive or bonus?

A. We changed the incentive.

Q. That was in 1939?

A. 1939.

Q. Was that following negotiations between the company and the union?

A. That was following negotiations, yes, sir.

Q. Was there a strike just before those negotiations?

A. There was a strike at that time.

Q. And these negotiations, and with respect of that plan, they went back to work on the plan?

A. That is true.

Q. As the result of negotiations?

Mr. Harris:

We object to the "result of negotiations".

Mr. Burr:

Well, that is apparent.

Mr. Harris:

Not apparent to me.

Q. The Union and company negotiated this strike and settled and agreed on it?

Mr. Harris:
We object to that.

The Court:
If he knows.

A. Yes, the Union and the company negotiated this agreement.
Q. And the strike was over?
A. Yes, sir.
Q. Mr. Harris asked you some questions about a general study of ore mining you had made all over the United States—

Mr. Harris:
I didn't say that. I asked him about a general study of ore mining in the district.

Mr. Burr:
Let's see if you didn't. I took it down at the time.

Q. I will ask you if he didn't ask you and you answered the question herein Birmingham was the only place in the world where the coal and iron ore and limestone lay side by side; do you recall him asking you that question?
A. Yes, sir.
Q. And he asked you in other parts of the country if they didn't have to haul it a great many miles?
A. Yes, sir.
Q. And you answered they had to handle it by boat?
A. Yes, sir.
Q. And then he asked was the Sango mine the greatest ore producing mine in the world?

A. Yes, sir.

Q. And you couldn't answer that one?

A. No, sir.

Q. Now, I will ask you some he asked you about. The haulage by boat you referred to, was that in the Lake Superior district?

A. Yes, sir.

Q. Were you familiar with that?

A. Only by seeing the boats going up and down the Lake.

Q. Have you seen the mines?

A. Yes, sir.

Q. I will ask you if your studies didn't show that over 94% of the iron ore produced in the United States was produced in the Lake Superior district.

Mr. Harris:

We object to that question.

The Court:

Overruled.

A. That is true.

Q. I will ask you if it was not also true that your study showed that of the 94% produced there approximately all but 16% was produced in the open pit operations?

Mr. Harris:

I object.

The Court:

Overruled.

A. I couldn't answer that.

Q. Well,—

A. There is a tremendous proportion produced in the open pit; how much, I can't say.

Q. Those open pits haven't a cover over them—

Mr. Harris:

We object to Mr. Burr testifying.

Q. Just describe those open pit mines, the length and distance.

A. They may be three quarters of a mile across. They go down with benches. They load the ore with steam shovels, and they will load more ore in one day than we can in fifteen days.

Q. They can mine more ore, using steam shovel, in one day than you can mine all over this district?

A. Yes, sir.

Q. I will ask you if this isn't true: If you will tell us, down here in this district, about how many tons of the ore we produce here that God Almighty has given us next to coal and limestone,—about how many tons of that ore does it take to make a ton of pig iron?

A. About 2.7.

Q. And how many tons of the Lake Superior ore will it take to make a ton of pig iron?

A. It will take one plus,—almost two tons.

The Court:

Almost two tons?

The Witness:

Yes, sir.

The Court:

Out of the Lake Superior ore?

The Witness:

Yes, sir.

The Court:

And two and what here?

The Witness:

2.7, about.

Q. Do you know about how much production per man —well, I will not ask that. You probably haven't got those statistics.

A. No, I couldn't tell you that.

Q. Now, to get down to your Birmingham conditions a little bit, are you familiar with the Spaulding mine, for instance, out here at Republic?

A. Yes, sir.

Q. Is there any transportation or any great amount of time in that mine?

A. Practically—

Mr. Harris:

We object to that, if the Court please.

Mr. Burr:

My friend went all over the United States. I am right here at Spaulding.

Mr. Harris:

Here is the proposition, Judge: I didn't ask him if he had made studies all over the United States. I asked him if he had made studies of the Birmingham district; I asked him as to the geology or geological formation.

There is but one thing that counts. These companies are mining ore and turning it into pig iron or steel for one purpose and one purpose only, and that is to make a profit, so the question is not how much a mine can do or how much a man can do, or how much a mine or man can't do, but what is the actual cost of producing a ton, and what is the actual cost of producing a ton of pig iron here, and this man doesn't know anything about producing a ton of pig iron in Pittsburgh as compared with the cost of producing it here, and that is the ultimate test of what counts in the economic phase.

The Court:
What is the question?

Mr. Burr:
The question is this, and evidently he doesn't understand the question I am fixing to ask. I am fixing to ask about the mine right over here on Red Mountain in comparison with the other mines—

The Court:
In this district?

Mr. Burr:
In this district. I am not interested in cost at all, but I am interested in this proposition: I know as a matter of common sense if the Woodward competes with the Republic, if they have a mine out here that doesn't have travel time, if a man comes along here and construes a law to include transportation cost, that mine is at an advantage over a mine out at Woodward that has two or three miles of travel.

Right here in this suit the underground mines at Spaulding are involved as much as at Raimund and just as much as at Sloss and just as much as they would be at the Tennessee Company mines, and just as much as they would be at other places, and the fact that Woodward doesn't have a suit here doesn't change that at all. If this suit were lost, Woodward would have to abide the results of this suit the same as the companies who are parties to it.

The questions Mr. Harris asked—I took them down—

The Court:
I overrule the objection.

Mr. Burr:
Yes, sir.

Q. Are you familiar with the conditions at Spaulding?
A. I made a trip there two or three years ago.
Q. How far is it the men have to walk?
A. About two or three hundred feet.
Q. You have investigated?
A. I walked down.
Q. You have told us the furtherest distance at Woodward?
A. Yes, sir.
Q. You don't know about the Tennessee Company mines?
A. No, sir.

Mr. Burr:
That is all.

Mr Harris:
They have gone into it so deeply I will have to ask one or two questions.

Mr. All:
I want to ask one question.

The Court:
All right.

(By Mr. All):
Q. They have asked you about water. Do the men in walking in the Woodward mine have to walk in water?
A. No, sir.
Q. Have they got a good pumping system?
A. Yes, sir,—I will not say it is a good pumping system; it is an average.

Mr. Harris:
We object to that.

The Court:
He has answered it.

Q. Do you have much accidents from a roof fall?
A. Not very much.
Q. In any mine there is a substantial danger of a roof fall if it isn't taken care of properly?
A. Yes, sir.
Q. And that hazard exists in all underground mines?
A. Yes, sir.
Q. Have you had any accidents on the travel slope? Do you keep that well propped?

Mr. Harris:
We object. Judge, he always puts in an adjective or adverb telling a man what to say.

Mr. All:
I am not telling him what to say. You probably—

The Court:
Don't tell him what to say.

A. I think we have had one accident in skips—in men traveling in skips since the skips went on in 1928, and we had one man killed at the bottom of the pocket where he worked in the handling of the skip.
Q. In what length of time?
A. Covering about 13 years.

The Court:
He said '28.

Mr. All:
I didn't know he said '28.

The Court:

Let's get on. Let's don't ask so many questions.

Mr. All:

Judge, I thought he said in 20 years. I am not trying to ask so many questions.

The Witness:

I do not recall about any other accidents.

Mr. All:

All right; that is all.

Re-Cross Examination.

(By Mr. Harris):

Q. You stated all the miners went out on strike about the same time in 1934, and they all came back to work the same time in 1934?

A. No, sir; there was an interval in their coming back to work.

Q. An interval in their coming back to work?

A. They all went out at the same time.

Q. The Tennessee Company opened up and ran two days and stopped. How long did the Woodward Company run after it opened up after that strike?

A. Until today.

Q. What?

A. Until today.

Q. You didn't just open up and run—

A. No, sir, we haven't shut down since that time. We might be down one day for an accident.

Q. You haven't shut down since 1934?

A. When I say shut down—We haven't worked full time.

Q. Yes.

A. There are times that we have not worked full time at full production, depending on what the furnaces were doing.

Q. I thought Mr. All asked you about a strike in 1938 or 1939?

A. There was a strike. We didn't operate during the strike in 1939. I thought that would be naturally understood.

Q. Well, how many times has the Woodward Company been shut down with a strike since you have been out there?

A. Twice.

Q. One was in 1934?

A. One was in 1934 and one in 1939.

Q. How long was the one in '39?

A. Sometime in October until about the middle of November.

Q. Not more than thirty days, was it?

A. No, sir.

Mr. Harris:

Judge, there may be some questions on some statistical stuff.—if it is time for a recess.—I want to go over it with Mr. Brodie.

The Court:

I want to ask a question before we recess.

Mr. Harris:

All right.

The Court:

You spoke of this motor car. What does it do in the mines?

The Witness:

It transports the empty cars into the working place, and it carries the loaded cars back to the nuck where they are picked up by the company motor or company chainer.

Q. How far is the furtherest distance that motor runs?

A. I would say around a thousand feet. I might be off on that a few feet.

The Court:

Does it go to all the working places?

The Witness:

Every place has its own motor, and it just makes trips in that one place, and if that motor—if there are not enough motors it may be transferred—

The Court:

I can't hear you.

The Witness:

If that motor is not sufficient we may transfer that one at another shift to another place.

The Court:

But all cars are shifted from the working face or near the working face to the nuck?

The Witness:

Yes, sir.

The Court:

By this motor?

The Witness:

By a motor.

Q. And that nuck may be as far as 1,000 feet or 1200 feet from the face where the men are actually drilling?
A. Yes, sir.

The Court:
We will take a recess for ten minutes.

(Thereupon proceedings were in recess from 3:10 P. M., to 3:20 P. M., at which time proceedings were resumed as follows:)

Mr. Harris:
I want to ask Mr. DeSollar a few more questions.

The Court:
Come back to the stand, Mr. DeSollar.

(Witness T. C. DeSollar thereupon resumed the stand.)

(By Mr. Harris):
Q. Mr. DeSollar, I am in confusion on one little item, and before I get into the things I wanted to ask you about primarily, I will ask you about that, and that is this:

Is the man skip that goes down into that mine since May 1st hauling the same number of men per trip that it hauled for, say, six months prior to May 1st?

A. No, sir.
Q. What changes did you make—
A. You say the man skip?
Q. Yes.
A. No change at all.
Q. What changes have you made as to the number of men you take into the mine at one time since May 1st as compared with prior to May 1st?

A. We lengthened the man car which goes on behind the skip in which we lower the men, and now, instead of putting 44 men on that man car, we are putting 64 in the car, and we are still putting sixteen men in the skip.

Q. And you are hauling—

A. We are hauling 80 men to the trip where we only hauled 60.

Q. You did that since you went on portal to portal?

A. Yes, sir.

Q. How many—I am not clear how many men you have working out at Woodward?

A. We have working in the underground mine about 540 men.

Q. What proportion are what you call productive men, and what proportion are service men?

A. We have approximately 325 production men, and the rest are service men. That varies from time to time.

Q. Mr. Burr asked you about the number of tons of ore from Superior it took to make a ton of pig iron and you said almost two?

A. Almost two.

Q. And in Birmingham almost three?

A. 2.7.

Q. 2.7?

A. Approximately.

Q. The ore that goes to Pittsburgh has to be transported on railroad cars before it gets to the boat a distance of 100 miles or more?

A. It has to be transported; how far I don't know.

Q. Then it is transported six or seven hundred miles on a boat?

A. Yes, sir.

Q. And then it is transported 200 more miles on a train?

A. Not necessarily.

Q. I mean if it is going to Pittsburgh?

A. I can't answer that.

Q. As a matter of fact, the cost of ore per gross ton of pig iron in 1939 in Alabama was $4.07, wasn't it?

A. I can't answer that.

Mr. Burr:

Just a minute. We want to object to that. He is going into costs.

Mr. All:

We object.

Mr. Burr:

We haven't gone into costs.

The Court:

I understand you didn't.

Mr. Harris:

I hadn't gone into it until Mr. Burr brought up the question of Pittsburgh,—

Mr. All:

You brought that up.

Mr. Harris:

—and the amount of ore they had to put into a furnace at Pittsburgh to make a ton of pig iron. Now, if you are going into a competitive basis between Pittsburgh and Birmingham—

The Court:

I am not going into that.

Mr. Harris:

I want to give Your Honor the competitive picture as we go along, because Mr. Burr, as we go along, slips in an edge of the picture.

The Court:

I feel like if I go into this I will have to go into all the costs.

Mr. Burr:

Will the Court permit me to state my position?

Mr. Harris:

The Court has ruled with you.

Mr. Burr:

He says I am slipping in a picture. It is a picture that has some business here. It is not a question of costs at all.

The Court:

Mr. Burr, isn't it a fact when you talk about competition that means competition in price?

Mr. Burr:

No, sir. I am not talking about that at all. Here is the competition. If Your Honor will listen to me, you will see what I mean.

The Court:

What kind of competition?

Mr. Burr:

I am trying to tell you now. It may be we have the advantages here in having the iron and limestone and coal located close together. It might be we have an advantage in cost. We may have—I am not inclined to think we have, but say you admit it. Here is the proposition: You haven't the right to take away an advantage that has been providentially given to us by minimizing it by interpreting a statute in a way to add to our costs unless—it don't make any difference what the costs are, big, high,

low or in the middle, you can't add to our costs unless the statute does it by including or adding the traveling time. It isn't a question of cost. They have a right to do it but they haven't done it.

Mr. Harris:

I could talk a week and I couldn't condense what I have in mind into as few words as Your Honor did. When you come to competition, the only kind of competition that counts is competition in price. Now, that operates to our detriment in another way.

If Your Honor doesn't want to go into it, we will reserve our exception and go ahead, and I want to ask him a couple more questions on a different line of competition.

The Court:

I believe I will let you go into it. We may be here a week or two longer, I don't know.

Mr. Ali:

We except.

Q. As a matter of fact, Mr. DeSollar, the United States Steel Corporation, of which the T. C. I. is a subsidiary, is one of the largest operators in the Superior region, isn't it?

A. It is a large one, yes, sir.

Q. A large operator?

A. Yes, sir.

Q. And the Republic Company, which has mines here, is also an operator in the Superior Region, isn't it?

A. I have no positive knowledge, but I think yes.

Q. Yes. So they would be competing with themselves?

Mr. Burr:

We object to that statement.

The Court:
I think so.

Mr. Burr:
It is a statement and an argument.

Mr. Lipscomb:
It is a fact.

The Court:
It is a statement.

Mr. Burr:
It is a statement and an argument.

The Court:
It is a statement, whether it is a fact or not.

Mr. Burr:
We don't know.

Q. In 1939 the cost of pig iron in Alabama was $4.07?
A. I don't know.

Mr. Burr:
We take a exception.

Mr. Harris:
He says he doesn't know.

Mr. Burr:
I don't care. I want to reserve the exception.

The Court:
You have your exception.

Q. The cost of pig iron in Minnesota in 1939 was $5.24?
A. I don't know.
Q. And in Michigan $5.28?
A. I do not know.
Q. And in Wisconsin, $4.81?
A. I do not know.
Q. And the average daily earnings in the ore mines in Minnesota,—the average hourly earnings of the ore miners in Minnesota in 1939 was 78 cents, wasn't it?
A. I do not know.
Q. And the average earnings of Alabama ore miners in 1939 was 63 cents?
A. I do not know.
Q. Do you know, after all your experience in these years in the Birmingham District, what the average hourly earnings of ore miners was at any time?
A. I do not.

Mr. Harris:
That is all.

The Court:
All right; that is all. Come down.

(Witness excused.)

The Court:
Next witness.

Mr. All:
Mr. Urquhart.

1578 J. E. URQUHART, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What are your initials?

The Witness:
J. E.

The Court:
How do you spell your name?

The Witness:
U-r-q-u-h-a-r-t.

The Court:
How?

The Witness:
U-r-q-u-h-a-r-t.

The Court:
How do you pronounce it?

The Witness:
Erkert.

(By Mr. All):

Q. Mr. Urquhart, what is your business?

A. General Superintendent of the Woodward Iron Company.

Q. Does that include their coal and ore divisions?

A. Yes.

Q. How old are you, Mr. Urquhart?

A. Fifty-two.

Q. How long have you been with the Woodward Iron Company?

A. Since 1933.

Q. How long have you been with them as general superintendent?

A. Since July, 1934.

Q. Since July, 1934?

A. Yes.

Mr. All:

If the Court please, I might state to avoid—

The Court:

You have been general superintendent since then?

The Witness:

I was general superintendent of transportation, blast furnaces and coke ovens up until July, 1934, and in July, 1934, I was made general superintendent of the ore mines as well.

Q. What had been your experience prior to the time you came with Woodward?

A. I was with the Semet-Solvay from 1912—1913 until I came with Woodward.

Q. In 1933?

A. 1933.

Q. What was the nature of your experience during those years?

A. I was in the operating department of the Semet Solvay Company, which is a by-product coke operation, and held all positions from foreman through vice president in charge of operations in charge of plants all over the country east of the Mississippi River.

Q. Then you got in the mining business first when?

A. When I came to Woodward.

Q. When you came to Woodward?

A. Yes, sir.

Q. You say you came to Woodward in 1933?

A. Yes, sir.

Q. Since you have been at Woodward, have you had to do with the dealings with employees with respect to working conditions—

A. Yes.

Q. —wages and so forth?

A. Yes, sir.

Q. Ever since you came?

A. Practically ever since I came.

Q. Do you recollect whether or not there were any negotiations in 1933?

A. No, I don't think there were any negotiations in '33 at all.

Q. Now, do you recollect when the ore mines became unionized?

A. It was either in the latter part of 1933 or early in 1934.

Q. Did you have any negotiations with any committee of employees or any committee of the union in 1934?

A. Yes.

Mr. Harris:

Am I correct in assuming, Judge, that my general objection to everything that happened at Woodward goes in?

The Court:

Yes, sir.

Mr. Harris:

With all witnesses?

The Court:

Correct.

Q. All right, sir.

A. Yes, in the early part of 1934 the company was presented with a proposed contract, and following that presentation there were meetings and negotiations.

Q. All right, sir. Now, I am going to hand you—is this the proposal you spoke of, 1934? This is Sloss Exhibit Number 25.

A. Yes, that is the one.

Q. After that proposal, did you have any meetings with the union committee?

A. I sat in meetings.

Q. Did you participate?

A. Yes.

Q. All right, sir. Was there any—in those negotiations what was said and done with respect to the matter of computation of work time on the face to face theory?

A. In the presentation—in the contract which was presented—

Q. You mean in that instrument?

A. Yes.

Q. In those demands?

A. There were 22 demands, among which there was one for the men to go one way on their time and come out on company time.

Q. Was that matter treated at the negotiations between the company—

A. It was discussed in a general meeting.

Q. What happened to it?

A. It was dropped.

Q. What was the attitude of the company to it as it expressed its attitude to the committee?

A. The company's attitude towards it was that it was—that it had been the prevailing practice for years and years, and they were unwilling to depart from what had been done.

Q. Was that stated to the union committee?

A. Yes, sir.

Q. All right, sir. Now, do you recollect whether or not there was a strike that year?

A. Yes, there was.

Q. Do you remember the inclusive dates—

A. It began—

Q. —when the men were out at Woodward?

A. It began on May 4th and ended on July 6th.

Q. What do you mean by ended on July 6th?

A. It was terminated by our coming to an agreement, a verbal agreement before representatives of the men and the Commissioner of Labor Richardson representing Mrs. Perkins, and the agreement was confirmed in a letter written to Commissioner Richardson by Mr. Berg, the President of Woodward Iron Company.

Q. Is this the letter you refer to marked Sloss Exhibit 24?

A. That is it.

Q. Is that the letter that you refer to?

A. Yes, sir.

Q. And that letter is dated July 6, 1934?

A. Yes, sir.

Q. Mr. Urquhart, can you tell us when the men, after that, after this letter was written to Mr. Richardson, when, with reference to that, the miners went back to work at the Woodward mine?

A. I don't recall exactly, but it is my recollection that they went back to work almost immediately.

Q. Almost immediately?

A. Almost immediately; within a day or two.

Q. And you say this letter was confirmatory of an agreement?

A. Yes, it was.

Q. Were you in the conference—

A. Yes.

Q. At which that agreement was made?

A. I was.

Q. Now, Mr. Urquhart, do you remember how long that agreement as such remained in effect?

A. It remained in effect for one year.

Q. Now, after that agreement, after that letter was written and when the men went back to work, what was done with the face to face policy as a method of computing work time?

A. There was no change made in what it had been for the years preceding.

Q. There was no change of the—

A. There was no change in what the practice had been—

Q. In what the practice had been—

A. —in computing time on face to face.

Q. Now, what happened in 1935, do you recollect?

A. Well, about a year from the signing of the 1934 contract, there was some discussion as to changes in the agreement for the year 1935, which were finally terminated with a letter written by Mr. Berg to the representatives of the men which continued the agreement which had been put into effect in July, 1934.

Q. Was—in the negotiations in 1935, was the question of face to face method of computing work time discussed or mentioned?

A. I have no recollection of it having been discussed whatsoever.

Q. How were the negotiations in that year consummated?

A. By a letter written by Mr. Berg to the—I believe to Mr. Norred who represented the men, and simply confirming our verbal understanding and referring back to the letter of 1934 and continuing that in efect.

Q. Who was Mr. Norred?

A. He was the representative—Chairman of the negotiations committee, I believe.

Q. All right. I will ask you if this is the letter to Mr. Norred to which you referred?

A. That is it?
Q. That is it?
A. Yes, sir.
Q. What is that paper attached to that letter?
A. Well, this is the letter that was written to Commissioner Richardson in 1934 to which the letter of 1935 referred.
Q. So that the letter and the copy of the Richardson agreement, which was confirmed, is the culmination of the negotiations in that year?
A. That was the end of the negotiations in 1935.

Mr. All:
The date of the letter is July 3, 1935.

The Court:
Has that been introduced as an exhibit?

Mr. All:
I want to introduce that as an exhibit.

The Clerk:
Sloss Exhibit Number 26.

Mr. All:
The Norred letter, I want it to include the Richardson letter of the previous year.

The Clerk:
All Exhibit 26?

The Clerk:
Sloss Exhibit 26.

(Thereupon a document dated July 3, 1939, addressed to Mr. H. H. Norred, Chairman of Negotiations Committee, Woodward Red Ore Mines, and signed "Yours very truly,

President," to which is attached the document described in connection with Sloss Exhibit Number 24, was marked Sloss Exhibit No. 26.)

Q. Now, Mr. Urquhart, we come to 1936. Do you recall the course of negotiations if there were any that year?

A. I think approximately one year from the signing of the 1935 agreement we were again presented with a proposed contract in 1936.

Q. I hand you this paper, and I will identify it later, if the Court please, and I will ask you if that is the proposed contract?

A. Yes, that is the one proposed for 1936.

Q. Do you recollect whether the matter of face to face computation of working time was involved in the negotiations in 1936?

A. In the proposed contract it was specified that eight hours a day meant eight hours at the working face.

Q. Were there any negotiations before a contract was reached in that year?

A. Yes.—

Mr. Harris:

That assumes one was reached.

Q. Well, if there was one—

The Court:

Yes, that assumes it was reached.

Mr. All:

I didn't mean to assume it was.

A. Yes there were a number of meetings held, but finally terminated by another letter of understanding, be-

ing written to the chairman of the negotiations committee for the Red Ore Local, and signed by Mr. Berg.

Q. Do you remember what that agreement was?

Mr. Harris:

We object. It would speak for itself.

Q. What the character of that letter or agreement was in a general way?

Mr. Harris:

Oh, Judge, it speaks for itself.

The Court:

Sustain the objection. It speaks for itself.

Q. To refresh your recollection, examine that paper.

A. That is the letter that was written in 1936.

Q. June 26, 1936?

A. Yes.

Q. All right. Now what had happened in the negotiations prior to the date of that letter?

A. We had some meetings and points that had been raised in their proposed contract had been discussed, and we had verbally agreed, and the letter of June 26th simply confirmed the discussion reached at the meeting—the agreement reached at the meeting—I should say confirmed the agreement reached at the meeting, and referred back to the agreement of 1935, and also to the agreement of 1934 as shown by the letter to Commissioner Richardson.

Q. Did the agreement arrived at, not talking about what the instrument shows,—did the agreement arrived at have reference to the Richardson letter, the original Richardson letter of 1934?

A. Yes.

Q. And did it incorporate that agreement—

A. It did.

Q. In your agreement?

A. Yes.

Q. And this letter purports to be confirmatory of the agreement reached orally?

A. That is right.

Q. Well, I show you another letter here also dated the 26th. Do you remember that?

A. Yes. That simply refers to some adjustment in the individual wage rate of three positions which we agreed to in the discussion and meetings and also referred to the amount of time that was to be allowed a miner for going into the mine whether he worked or not. We allowed a miner two hours time—if he went in the mine and due to power delay or something else, couldn't work, he was allowed two hours time.

Q. Was your agreement as shown here—

The Court:

Mr. All, why go into that?

Mr. All:

This is preliminary. I have my reasons for it, but it would take me longer to explain them than to leave it out. I want to introduce these letters as one exhibit.

The Court:

Mr. All, you are trying to go into everything in this case.

Mr. All:

No, I am not trying to—

The Court:

I am not going into everything in this case. I am telling everybody.

The Clerk:
This will be Sloss Exhibit Number 27.

The Court:
I have been sitting here and letting you go on. Let's get on to the wages.

Mr. All:
Mark the proposal before the other two, and follow that with those letters.

The Clerk:
You want this ahead of the two letters?

Mr. All:
Yes.

The Clerk:
Make it 27, and the letters 28.

Mr. All:
Yes.

The Clerk:
27 and 28.

(Thereupon a document entitled, "Working Agreement between the Woodward Iron Company and Their Employees, Members of the International Union of Mine, Mill & Smelter Workers," which said document was unexecuted, was marked "Sloss Exhibit No. 27.)

(Thereupon copies of two letters, each dated June 26, 1936, and addressed to Mr. H. H. Norred, Chairman of Negotiations Committee, Woodward Red Ore Mines, were marked Sloss Exhibit No. 28.)

Q. Mr. Urquhart, I hand you this paper here—

Mr. All:
Mark this, please.

The Clerk:
It will be Sloss Exhibit Number 29.

The Court:
Have you already got one numbered 28?

The Clerk:
Yes, sir, the two letters were 28, Judge, and the proposal was 27.

(Thereupon a document entitled "Copy of Agreement Presented by Red Ore Committee to Company May 31, 1937," was marked Sloss Exhibit No. 29.)

Q. Mr. Urquhart, I hand you Sloss Exhibit Number 29, and ask you what that is?

A. This is the proposal that was made to the company presented to the company in May, 1937, by the Union.

Q. And what—did any negotiations follow the presentation of that proposal?

A. Yes.

Q. Do you recollect what they were?

A. Well, the proposal asked for sole collective bargaining rights and check off and other things, and in the discussions—

The Court:
Don't they show for themselves, speak for themselves?

Mr. All:
Judge, I could do that, but—

The Court:
Let's don't go into that.

Mr. All:
What I am going to show is this:

Q. Was there any discussion of the portal to portal or face to face policy?

A. There was no discussion of the portal to portal at all.

Q. How was that matter wound up?

A. It was wound up first by another letter from Mr. Berg, President of the Company, to Mr. Norred, and later, I believe it was in October, and the matter had become final after Mr. Berg had written his letter,—for some months, when the union claimed they didn't have an agreement, because they had signed nothing, so, after Mr. Berg, trying to convince them it was just as binding whether they signed it or not—

The Court:
Let's don't go into all that detail, will you, Mr. All?

A. —we finally signed an agreement.

Q. Now, will you look at this paper here and tell me what this is? I will have it marked.

A. This is the final—the copy of the final agreement signed October 2nd by the Union and the management.

Mr. All:
Mark that as an exhibit.

The Clerk:
Sloss Number 30.

The Court:
Dated when?

The Witness:
October 2, 1937.

(Thereupon a document entitled "This Agreement, Dated October 2, 1937, between The Woodward Iron Company, Hereinafter Referred to as the Company, and Lipscomb Red Ore Local Union Number 103, for Members of the International Union of Mine, Mill & Smelter Workers or its successor, hereinafter referred to as the Union," was marked "Sloss Exhibit No. 30.")

Mr. All:
If I haven't; I want to formally offer the proposal.

The Court:
That is 29, isn't it?

Mr. All:
And then agreement as signed on October 2, 1937.

The Court:
That is for the Woodward Company?

Mr. All:
Sloss Exhibit for the Woodward Company.

The Court:
I mean it is the Woodward Company agreement?

Mr. All:
Yes, sir.

Q. Now, do you recollect what happened in 1938?

A. There was a presentation of a proposed agreement and after some discussion the contract which terminated in October of 1937 was simply continued in effect through the year 1938.

Q. All right. I want to hand you this paper and a letter attached,—copy of letter attached, and ask you if that

is the proposal and copy of the letter which expressed the agreement reached at that time?

A. That is right.

Q. I want—was there—during the negotiations was the matter of computation of work time on face to face or portal to portal—

A. It wasn't discussed at all.

Q. That matter was not discussed?

A. No.

Q. The matter of work time was not discussed?

A. No.

The Clerk:

It will be Sloss Exhibit 31.

Mr. All:

There are two exhibits in there.

The Clerk:

Make it 31 and 31-A, if you want it that way.

Mr. All:

31 and 31-A is probably better.

(Thereupon a document entitled "Copy of Agreement presented to Company Red Ore Committee, 1938," was marked Sloss Exhibit No. 31, and copy of letter from Company to Red Ore Local Number 103, dated September 29, 1938, was marked Sloss Exhibit No. 31-A.)

Q. Now, Mr. Urquhart, do you remember how long that agreement remained in effect?

A. Well, that remained in effect until the early part of 1939, when we were notified by the union that they wished to negotiate changes in their existing contract.

Q. All right. After the 1938 negotiations were closed in the way you have stated, what method of computation of work time did you follow?

A. The work time was considered just the same as it always had been, face to face.

Q. And did you continue to pay on that basis?

A. We continued to pay on that basis.

Q. Now, you say for the next year—I will ask you what this instrument is?

A. That is the proposal submitted to the company in March of 1939 by the Union.

Q. Do you recollect what immediately followed that in the way of negotiations, if any?

A. Shortly following that presentation there was a meeting and at that meeting the union then asked for something which they had not presented in the proposal which was sole collective bargaining rights.

Q. The proposal did not contain a provision for sole, exclusive bargaining rights?

A. It did not.

Mr. Burr:

What is the number of that exhibit?

The Clerk:

32.

The Court:

Let's not go into that.

(Thereupon a document entitled "Copy of Agreement presented by Red Ore Local to Company, March 10, 1939," which was not signed, and attached to which were two sheets containing various proposed wage schedules, was marked Sloss Exhibit No. 32.)

Q. Then when you met with them what happened?

A. We refused to give sole collective bargaining rights without an election certified to by the National Labor Relations Board.

Q. Did a hearing and an election follow?

The Court:

We are not going into that.

Mr. All:

Judge, I just want to state this in the record—

The Court:

I don't think it belongs in the record.

Q. Did you have a second proposal later?

A. We had a proposal following—sometime following the election which was held in July, 1939.

Q. I will ask you if that is a copy of the proposal, and what is the date of it, the date on which you received this proposal?

A. This was received on the 1st of September, 1939. It is a proposal that was made to the company by the union.

Mr. All:

Mark this as the next exhibit, please.

The Clerk:

Sloss Exhibit No. 33.

(Thereupon a document entitled "Copy of Agreement presented by Red Ore Committee to Company after election conducted by N. L. R. B. to determine bargaining agency,—presented 9/1/39," was marked Sloss Exhibit No. 33.)

Q. Now, did you have negotiations after this proposal?

The Court:
Exhibit 32, was it just as to the right of bargaining?

Mr. All:
No, sir. That didn't have that in it. They afterwards made that claim orally.

The Court:
Well, what—

Mr. All:
Judge, if I might state this for the record: I don't mean to be—I think I can explain it to you.
The written proposal did not have exclusive representation in the contract, bargaining on behalf of the members—

The Court:
I don't see that is material.

Mr. All:
I thought you said you wanted to know.
Later they asked orally—said they wanted to incorporate that in it. Later, we had an election and they presented this second proposal after the election on September 1, 1939.

The Court:
When was it, September what?

Mr. All:
September 1, 1939, was when it was presented.

Q. Now, what followed the presentation of this second proposal?
A. Well, there was a long series of meetings, probably eight or nine, and no agreement was reached, and finally

resulted in a strike on October 16th, which ended in November, about the 13th—

Q. 1939?

A. 1939.

Q. In those negotiations, both before and after the strike, was the matter of work time a subject matter of discussion?

A. No, that was not one of the points at issue, and was not discussed.

Q. And did a contract finally result?

A. A contract resulted which was, I believe, signed on the 16th of November, 1939.

Q. Is this that contract or a copy of it? Is it one of the duplicate originals of not?

A. That is right.

Q. That is a copy of that contract?

A. That is a copy of that contract.

Q. Now, Mr. Urquhart, I will ask you if in those negotiations leading up to that contract, and in the contract, if there was any discussion of the matter of incentive for the production men?

Mr. Harris:

Well, he is asking what is in the contract, and that would speak for itself.

Mr. All:

The contract wouldn't speak for what the other contract was.

Q. But were the rates discussed?

A. Yes, sir. There was a claim there was not a proper distribution of the contractor's earnings. In the contract we signed November 13th there was redistribution of earnings given the miners, and incentive scale of earnings based on the tonnage.

Q. Based on the tonnage?
A. Yes, sir.

The Court:
Is that in the contract?

The Witnes:
Yes, sir.

The Court:
That provision?

The Witness:
A. Yes, sir.

The Court:
That is in evidence.

Mr. All:
What they got is in evidence, and what they got before isn't.

The Court:
You have gone into it.

Q. When you say a distribution of earnings, you mean a distribution of earnings of the production men?
A. That is right.
Q. And what you did in that contract was to redistribute—a matter of redistribution of the premium earnings?
A. Yes, sir.

Mr. All:
Now, I want to introduce this in evidence.

The Clerk:
It will be Sloss Exhibit 34.

The Court:
That is the contract dated November 13, 1939?

Mr. All:
Yes, sir.

Mr. Harris:
And I assume my general objection to all contracts is in, Judge.

The Court:
Yes.

Mr. Harris:
On the theory I stated earlier?

The Court:
Yes.

Mr. Harris:
That is all right.

(Thereupon an agreement dated November 13, 1939, between the Woodward Iron Company and Lipscomb Red Ore Local No. 103 of the International Union of Mine, Mill & Smelter Workers, signed by H. A. Berg, President, and Van D. Jones, J. L. Robinson, John Crumpton, Oliver Johnson and Will Rencher, and attached to which were five pages of various wage schedules and rates, was marked Sloss Exhibit No. 34.)

Q. Now, Mr. Urquhart, what about the 1940—the next year?

A. Well, the next year about the expiration date of out 1939 contract we were notified they wished to negotiate further changes, and a proposal was made, following which there were negotiations and discussions which finally

terminated in a contract being signed in—December, 1931, I believe it was,—in the latter part—almost the end of December, 1940.

Q. What is this instrument here that I hand you?

A. Well, this is the proposed amendment and changes that were presented to the Woodward Iron Company by the Red Ore Local on—changes they wanted made in the contract which was in effect.

Q. When was the date of presentation of that proposal of changes?

A. It was presented on the 6th of November, 1940.

Q. 1940?

A. Yes, sir.

Q. Now, did negotiations follow that?

A. Yes.

Q. What was said and done with respect to the matter of the face to face or portal to portal method of computation of work time?

A. Well, in that proposal, they made one of the proposed amendments was that the men be paid on a collar basis,—portal to portal basis.

Q. That was in the negotiations?

A. That was in the proposed amendment they made and discussed in our negotiations.

Q. All right. What position did you—who else was in the conference? What position did the company take with respect to the portal to portal change?

Mr. Harris:

What did they announce to the men? I don't like the way he asks it. What did they tell the men?

The Court:

Yes, what did they tell the men? What did they reply?

The Witness:

I was carrying on the negotiations for the company, and refused to change the practice that was in effect, and had been in effect for years past.

Q. Did you give your reasons for it? Is what you have expressed the reason you gave?

A. I said it had been the prevailing practice for years, and I was unwilling to change it.

Q. What was their reply to you, if any?

A. They did not press the point after that, and said the matter was in the hands of the Wage and Hour Division at that time.

Q. Was a contract—let me introduce this proposal.

The Court:
What is that, Exhibit 34 or 35?

The Clerk:
He hasn't introduced it yet. It will be 35.

The Court:
What is the date of it, November—

Mr. Bronaugh:
It was presented on November 6th.

Q. Mr. Urquhart, you said—

A. Presented on November 6th, and finally signed December 31st, I believe.

Q. That is the contract?

A. Yes.

Q. We haven't got to the contract yet. When was that presented?

A. Presented by the Union on the 6th of November.

The Clerk:
That will be Sloss Exhibit Number 35.

Mr. All:
Mark this the proper exhibit.

The Clerk:
Sloss Exhibit 35.

(Thereupon a document entitled, "Proposed Amendments and Changes in the Present Contract by and between Woodward Iron Company and Lipscomb Red Ore Local No. 103, of International Union of Mine, Mill & Smelter Workers, All of Which is to Supercede The Existing Contract, Including the Parts Retained to be Incorporated In the New Contract," was marked Sloss Exhibit No. 35.)

Q. Then is this the contract as executed?
A. Yes, that is the contract as executed.

The Court:
What is the date of that, 31st of December, 1940?

Mr. All:
December 30, 1940.

Q. Attached to this original here, Mr. Urquhart, appears to be two letters—
A. One of those is simply a letter to Mr. Jones correcting an error which had been made—

Mr. Harris:
Doesn't the letter speak for itself?

The Court:
It speaks for itself.

Mr. Harris:
If you are introducing it—

Mr. All:
Well, I didn't know whether—well, we will introduce all this.

The Clerk:

Exhibit 36.

(Thereupon a document dated September 30, 1940, being an agreement between the Woodward Iron Company and Lipscomb Red Ore Local Number 103 of the International Union of Mine, Mill & Smelter Workers, attached to which were five sheets of various wage schedules and rates, and also attached to which were two letters, the first being dated December 30, 1940, and addressed to Mr. Van D. Jones, Executive Board Member, I. U. M. M. & S. W., Bessemer, Alabama, and signed by Woodward Iron Company, by J. E. Urquhart, General Superintendent, and the second being dated December 30, 1940, addressed to Mr. J. L. Robinson, President, Lipscomb Red Ore Local Number 103, I. U. M. M. and S. W., and signed Woodward Iron Company by J. E. Urquhart, General Superintendent, was marked Sloss Exhibit No. 36.)

The Court:

Didn't you go into these letters before you came into the Court room? There are three lawyers here.

Mr. All:

Judge, I went into the details on the other two. We have gone through this a great deal more rapidly than the other two.

Now, if the Court please, if there are any exhibits which have been marked and identified, which have not been introduced, I want to formally offer them.

The Clerk:

You have three Sloss Exhibits marked for identification, Numbers 2, 5 and 6.

The Court:

They are in evidence. Of course, the defendant objects and excepts.

Mr. Harris:
I didn't understand him, Judge. He said if he had ever offered any for identification—

Mr. All:
No, I said if I had missed formally offering any one or two or three in there—

Mr. Harris:
Oh, all right.

Mr. All:
I want it understood I offered all of them.

Mr Harris:
Shall I go ahead with the witness?

The Court:
Are you through with the witness?

Mr. All:
Yes, sir.

The Court:
Have you any questions?

Mr. Burr:
Just one or two questions.

(By Mr. Burr):
Q. Mr. Urquhart, I believe the first Sloss Exhibit you identified was Sloss Exhibit 25, which proposed 22 requests. Do you remember that one in 1934?
A. Yes, sir.
Q. Then the next one, 26, was the letter to Mr. Richardson?
A. Yes.

Q. Now, was there any wage increase granted at that time?

A. There was.

Q. The wage increase was granted at that time?

A. Yes.

Q. Now, the next one was when the extension of 26 was given in 1936. Was any wage increase granted then, —the first extension of Richardson agreement?

A. No, there was no general increase as was given in 1934. There might have been one or two individual wage rates that were adjusted.

Q. 1934 was a general increase?

A. Yes, sir.

Q. Respecting everybody?

A. Yes, sir.

Q. '35 was just a few separate—

A. Yes.

Q. And in '27,—'26—'36,—

A. No, there was no general wage increase there at all.

Q. Well, was there one in '39,—in '37?

A. In '37?

Q. Yes, sir.

A. There was no wage increase as a result of these negotiations.

Mr. Harris:

We object to whether there was an increase as a result of negotiations.

Q. Did the wage increase follow or not?

The Court:

He just asked if there was a wage increase.

A. There was a wage increase in 1937 prior to this negotiation.

Q. Now, in 1937, you continued the former agreement in effect, I believe?

A. '38, did you say?

Q. '38, yes, sir.

A. Yes, sir.

Q. Was there any increase granted then?

A. No.

Q. Now, in the early part of '39—I don't believe you made any agreement until the latter part of September, 1939?

A. That is right,—November.

Q. November, 1939, is that when the incentive increases were granted?

A. Yes, sir.

Q. Were there other increases besides that or not?

A. Yes, there were some other increases.

Q. That was the last one until you signed the contract of 1940, I believe?

A. That is right.

Mr. Burr:

That is all.

The Court:

All right, Mr. Harris.

Cross Examination.

(By Mr. Harris):

Q. Did you ever study law?

A. No, sir.

Q. Who were the men that you first started dealing with in 1933?

A. I didn't deal with anybody in 1933. In 1934 there was a committee—

Q. I just asked their names. Who were they? That is what I want to know.

A. Well, there was Mr. Norred. I don't know that I can recall them all. I can name some of them. Mr. Norred, I think Mr. Long, Mr. Stringfellow and there were two or three negroes.

Q. Do you remember their names?

A. I think one of them was Oliver Johnson, one of them, I believe, was named Rencher, and Woodly.

Q. All right. In 1935, give the names of the men you dealt with.

A. Well, I—1935, Mr. Norred was one, I believe Mr. Crumpton was one, John Crumpton, Albert Horn, and I think Mr. Long, and also two or three negroes.

Q. Can you give us the names of any of the negroes?

A. I think Oliver Johnson was one.

Q. And was John White a white man or a negro?

A. I don't remember whether he was a member of the committee at that time or not.

Q. All right. In 1936, what men did you deal with?

A. Norred was the principal one. His committee, I think, at that time was—

(Here the lights in the Court room went out.)

Mr. Harris:

Can the Court reporters see to take this down? If they can't, we will have to suspend, I judge.

The Court:

Have to suspend.

(Here the lights in the Court room came back on.)

Q. You were giving the names of the men with whom you dealt in 1936, and you started off with Mr. Norred, stating he was the principal one. What I wanted were the names—

A. I don't know that I could give the names of all the committee members. It was constantly changing at each year, and I do know Norred was one of the members. I don't have it in my mind.

Q. I noticed you had a very remarkable memory for the documents—

Mr. All:
I object.

A. They had a changing committee from year to year.

Mr. Burr:
The letters are signed by the committee.

Q. You can't tell me, in 1937 who were the men you dealt with?

A. Well, I know Mr. Norred was still one.

Q. Do you remember ever having any conversation with anybody besides Mr. Norred during these negotiations?

A. Oh, yes, the members of the committee, but the committee was changing all the time.

Q. Tell us the name of some men that actually did some talking to you besides Mr. Norred.

A. Well, I suppose every member of the committee did some talking.

Q. Was there a man named McGraw that was on the committee?

A. I don't think so at that time. McGraw was on one of the original committees in 1934, but I have no recollection of his being on there in 1937.

Q. Well, the very first thing the union asked for in 1934 was union recognition, wasn't it?

A. That was one of the things they asked for.

Q. All right. And they never did get it as a union until 1939, did they?

A. Yes, I think so.

Q. What year did they get the first contract,—this contract made and entered into between the Sloss-Sheffield and this union,—starting off anything like that,—Woodward, I mean, and this union,—I beg your pardon.

A. 1936,—certainly in 1937.

Q. If they had it it was in these instruments you have talked to Mr. All about and which he has shown you and which have been introduced in evidence?

A. That is right.

Q. There were no other instruments?

A. No.

Q. Now, I notice practically all those instruments were signed by Mr. Berg, and none of them were signed by you.

A. That is right.

Q. What year was it that the union demanded a 6-hour day?

A. I have no recollection of their having demanded a 6-hour day at any time.

Q. What year was it they demanded a 7-hour day?

A. 1934.

Q. They demanded a 7-hour day in 1934?

A. Yes, sir.

Q. And what did you tell them? Were you the man that acted as intermediary when they asked for a 7-hour day?

A. No. I was present at the negotiations.

Q. Well, who made the reply to them?

A. It may have been by me or may have been made by Mr. Berg.

Q. Who was present representing the union at all these negotiations? Was Mr. Berg at all of them? I mean representing the Woodward Iron Company. Was Mr. Berg at all of them?

A. I think so.

Q. Were you there?

A. Yes, sir.

Q. Who else was there representing the Woodward Iron Company?

A. Nobody—probably Mr. DeSollar. Mr. DeSollar was present at one meeting.

Q. Which year and which meeting?

A. 1934, and I don't know which meeting.

Q. When they asked for a 7-hour day, what did you tell them?

A. I told them we could not grant it.

Q. Could not grant it?

A. No.

Q. Immediately upon the refusal to give them a 7-hour day, didn't they ask for time either going in the mine or coming out?

A. That was—one or either both of them were in the demand as they presented them to the company.

Q. In 1934?

A. In 1934.

Q. You kept track of the general progress of the union membership at the Woodward Iron Company, didn't you?

A. I had no way of keeping track of it at all.

Q. You didn't know what years they were strong and what years they were weak?

A. No, I would have no way of knowing.

Q. Now, all this testimony that you have given with reference to dealings with union men had reference, I assume to the representatives of the International Union of Mine, Mill & Smelter Workers?

A. That was—the presentation was made as the Red Ore Local of the International Union of Mine, Mill & Smelter Workers.

Q. You haven't confused any dealings and negotiations with the American Federation of Labor—

A. No.

Q. —in this testimony here during all—

A. No.

Q. —the evidence you have given in reply to his questions?

A. No.

Q. Well, when did the American Federation of Labor enter the picture at the Woodward Iron Company?

A. I don't know for a fact, but I think it was in 1939.

Q. 1939?

A. 1939.

Q. Well, during the time that this union of the International Union of Mine, Mill & Smelter Workers were asking for recognition, was there any kind of company union at the Woodward Iron Company?

A. No.

Q. Did you have any kind of employees representation plan?

A. No.

Q. Did you have any Brotherhood of Miners of—

A. No.

Q. —Captive Mines?

A. No.

Q. You never had any kind of union organization, either company or international, until the local of the International Union of Mine, Mill & Smelter Workers?

A. I don't know. There might have been—there might possibly have been and probably was in 1939 a split between the employees themselves between the A. F. of L. and the International Union of Mine, Mill & Smelter Workers, but how the split was, or the details of it, I have no way of knowing.

Q. Didn't you have an employees representation plan—

A. No.

Q. —in 1933?

A. If they did I didn't know anything about it, because I had nothing to do with the Red Ore Mines at that time.

Q. When did you start with the Red Ore Mines?

A. July, 1934.

Q. Did you have an employees representation plan in 1934?

A. No.

Q. This system of putting the brass check at the mouth of the mine was instituted after the union had demanded it, wasn't it?

A. They made a request in our negotiations in 1939 that as a matter of safety that the brass check system be installed.

Q. Yes. They put it on a basis of safety to ask you to put it there?

A. Yes.

Q. Did they ask for it without limiting it to a safety measure, and you refused, and then when you refused to do it they put it on a safety basis, and then you granted the request?

A. I have no recollection of that.

Q. You don't recall it?

A. I have no recollection of it being refused.

Mr. Harris:

Some of those documents, Your Honor, I have never seen, and I haven't talked to any Woodward representatives, and if something occurs in our conversations tonight, I might want to ask him, I would like to have the privilege to do so.

The Court:

You have the privilege when we resume tomorrow.

Mr. Harris:

I will not ask him very much, I will assure you.

There is one question—I assume you are not going to call another witness this afternoon. There is one question about going down into the Republic Mines tomorrow.

Did they speak to you about it, Mr. Burr?

Mr. Burr:

Yes, sir, I am perfectly willing for them to go tomorrow, but I am afraid I will run out of witnesses. That is the trouble, the same ones that have to go down there have to be here.

Mr. Lipscomb:

That is the first one we asked to go in.

Mr. Burr:

What is the use of raising that, Judge? I can use them after they come back.

Mr. Harris:

I don't want to stop the Court while they are going down in the mines.

Mr. Burr:

Off the record.

(Here followed an off-the-record discussion.)

Mr. Burr:

I want this understanding. I want them to go in both of Republic's mines. There are two mines, and I want the benefit of cross examination as to both of them, at least.

The Court:

Can you go to the other one tomorrow?

Mr. Burr:

We don't care when they go.

The Court:

Well, we will be back—we will convene tomorrow morning at 9:30.

Court is adjourned for the day.

(Whereupon, at 4:35 P. M., July 26, 1941, an adjournment was had to 9:30 A. M., July 17, 1941.)

July 17, 1941, 9:30 A. M.

Court met Pursuant to Adjournment.

The Court:
Who will you have?

Mr. Burr:
Mr. Neal, whom I expected—hoped to be able to take up and finish with Wenonah this morning is still sick, so I will take Mr. Carter so as not to waste any time, and go on with that.

The Court:
All right.

Mr. Burr:
Wait a minute. Mr. Urquhart's examination had not finished.

Mr. Harris:
I don't want to ask him anything more.

Mr. Burr:
Did you have anything else?

Mr. All:
I have this evidence, these pay statements and receipts. I want to separate them by years and put them in.

Mr. Harris:
The same objection we have had—

The Court:
You mean you have already introduced them?

Mr. All:
It is a similar receipt. I didn't introduce them. They are similar to the receipts I introduced as to Sloss. I want to put them in.

The Court:
I will overrule the objection. What exhibit are those?

The Clerk:
They are not marked yet.

Mr. Bronaugh:
We will fix them and give them to the clerk. What exhibit of Sloss will they be?

The Court:
Be 37.

(Thereupon a number of pay receipts of employees of Woodward Iron Company were later furnished to the clerk and were marked Sloss Exhibit No. 37:)

1612 EWING CARTER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. Mr. Carter, what are your initials, please, sir?
A. Ewing,—E-w-i-n-g.
Q. How old are you?
A. Fifty.

Q. Are you a graduate of any universities or colleges?

A. Finished Alabama and didn't graduate and took post graduate work,—in 1910. I took post graduate work, a special course..

Mr. Harris:

We can't hear him, Judge.

A. I say in 1910 I came out of Alabama and didn't get a degree because I was taking special work, taking post graduate work.

Q. Where did you go from there?

A. I came out and went to work on Red Mountain and worked there a few months and was laid off and worked around two or three places in the Southwest, in the Chattanooga district, and then went to Mexico.

Q. Was that mining there?

A. Yes, sir.

Q What kind of work did you do in Mexico?

A. Mining and railroad work.

Q. What kind of work in Chattanooga?

A. Coal and some little iron mines.

Q. Were they open mines or underground mines?

A. Underground.

Q. What sort of mines did you work in in Mexico?

A. Copper.

Q. What kind of course did you take at the University of Alabama?

A. Mining.

Q. Mining engineering?

A. Yes, sir.

Q. And when you came back and came to Red Mountain, what year was that?

A. 1910.

Q. And what sort of work did you go to work at on Red Mountain?

A. I went to work at the Fossil Division, now called Wenonah.

Q. What kind of work?

A. Rodman on the underground engineering crew.

Q. Who was superintendent of Wenonah?

A. At that time McDaniel, I believe.

Q. Was that before George Neal came to Wenonah?

A. Yes, sir.

Q. About how long did you work as a rodman on the underground engineering force?

A. Six months.

Q. Then were did you go?

A. I spent five years in Mexico and South America mining down there.

Q. When was that?

A. Between 1910 and '17.

Q. Those were copper mines, I believe you said?

A. Gold mines in Colombia, South American, and Copper Mines in Peru.

Q. Then you came back to the Mountain?

A. Came back to the mountain.

Q. What time did you get back?

A. In August, 1917.

Q. Where did you go to work at that time?

A. Had headquarters at Muscoda Division for a short time and then in the Ishkooda Division,—engineering, and I was in the army a little while and discharged, and came back, and then division engineer, Ishkooda Division, and then made mine inspector for the entire mountain.

Q. What were your duties at Muscoda when you were division engineer?

A. Mine work.

Q. Underground?

A. On the surface and underground.

Q. Was the major part underground or on the surface?

A. Yes, sir.

Q. Which, underground or on the surface?
A. Underground.
Q. Then you were made safety inspector for the entire mountain?
A. Yes, sir.
Q. Muscoda and Ishkooda and Wenonah?
A. Yes, sir.
Q. What did you do?
A. Made safety inspections.
Q. Was that underground or surface?
A. Underground.
Q. How long did you serve as safety inspector?
A. Three years, and I left the company.
Q. That brought you down to when?
A. July of 1921.
Q. Then you say you left the company?
A. I went to North Carolina and operated a Feldspar mine for about a year.

The Court:
Feldspar?

The Witness:
Yes, sir.

Q. Was that an underground operation or a pit?
A. Partly underground and partly a pit.
Q. And you say you stayed there about a year?
A. About a year.
Q. Then what did you do?
A. I came to the Tennessee Company as construction engineer.
Q. What were your duties?
A. Construction work.
Q. Underground?
A. No, sir, on the surface. We were doing some work out at Vann's Quarry at Ketona, and we were figuring

on other operations which later developed. Very little of that was underground.

Q. What period does that cover?

A. 1922 to '24.

Q. Then what kind of work did you take up?

A. I was made chief engineer of iron ore mines and quarries.

Q. What were your duties as chief engineer? What properties did you have charge of?

A. All three divisions and the limestone mine, which we were developing, and before we changed over from Vann's Quarry—

Q. You say the limestone mine was developed during that time?

A. Yes, sir.

Q. You refer to the mine known as Number 5?

A. Number 5 limestone mine.

Q. That mine is between what mines?

A. Four and Six mines.

Q. What slope did you use—did you have to sink a slope for your limestone mine, or did you use a slope which had been used before?

A. We used old Number 5 slope which had been abandoned.

Q. As I understand, the limestone lies above the ore?

A. 320 feet above the ore seam. We used the old slope and drove raises up to the limestone deposit and dropped the ore into the old workings through chutes and drops.

Q. When did your services as construction engineer—

A. This was when I was chief engineer.

Q. I mean as chief engineer, when did your duties cease?

A. May, 1931.

Q. May, 1931?

A. Yes, sir.

Q. Then where did you go?

A. I was made superintendent at Muscoda.

Q. Have you been superintendent since that time at Muscoda?

A. Yes, sir.

Q. As superintendent at Muscoda, what mines have you been in charge of?

A. Four and Six and the Limestone mine.

Q. Have any other mines over there been in operation during that period of time?

A. No, not since I have been there.

Q. Well, referring to those mines, Mr. Carter, about how often did you go underground as superintendent?

A. Well, unless there is some unusual occasion to present, I try to go underground two or three days a week.

Q. Two or three days a week?

A. Yes, sir.

Q. And have during that entire period of time?

A. Yes, sir, unless something exceptional—

Q. Something like this case keeps you out?

A. Yes, sir.

Q. But on ordinary occasions you go underground three or four times a week?

A. Yes, sir.

Q. And did you have meetings with your underground mine foremen?

A. Practically every day. I talk to the foremen every day, have meetings in my office every afternoon, and the men on the night shift will come by during the day.

Q. Have you been pretty well acquainted with the personnel in your mines during that period of time?

A. Fairly well, yes, sir.

Q. All right, sir. I will ask you, please, sir, to look at this map over here which has been introduced in evidence as Defendant's Exhibit—T. C. I. Exhibit Number 1.

Where is the entrance to—we will take—since I have got a mine foreman, what mine is Wilson Goodwin mine foreman in?

A. Number 4.

Q. Then I will ask you to take Number 6 as illustrative of your testimony, and I will take up Number 4 with Wilson. We can save time probably. Where is Number 6?

A. Right there (indicating on map, T. C. I. Exhibit Number 1).

Q. All right, sir. Do you recall about how far they had gone down in the workings of that mine when you reached there as superintendent?

A. 1932?

Q. I think that will be back far enough.

A. We had reached the basin. The slope hasn't been driven any further.

Mr. Harris:

Had reached what?

The Witness:

The basin. In other words, there is a basin in here. The pocket is at the bottom of the basin, and all our workings slope up from there, and the pocket was put in there while I was chief engineer.

Q. The pocket?

A. Yes, sir.

Q. What does that pocket do?

A. In building that pocket, we dropped down about 75 feet below the seam, and a raise was put up to the ore.

The Court:

A fault?

The Witness:

No, to get the haulage room in there. The haulage system runs in the ore 75 feet below the pocket.

The Court:

I see.

The Witness:

It gives us a chance to dump that ore. We have a rotary dump that handles the ore into the skip and we haul it out to the surface.

Q. You have a rotary dump?

A. One central rotary dump.

Q. How is that ore brought to the pocket, to the dump?

A. By electric haulage, locomotive haulage.

Q. Who operates the locomotive haulage?

A. The locomotive engineers, the service crews.

Q. Where do they pick up the cars?

A. Picks up the cars—we push all our empties out and pull our loads back. In other words we keep the motor on the downhill side.

Q. Where do they take the loads from?

A. They come from the different working headings.

Q. Who loads those cars?

A. The mining crews, production crews.

Q. Where does he leave them when he loads them?

A. On the side track right by the stope or working place.

Q. Is that part of the production crews' job, to put those cars on the side track at the end of the shift?

A. During the shift. The head miner calls the dispatcher, who operates the haulage system, and he brings in empties and takes out the loaded cars.

Q. Your slope, when you went there as superintendent, was how far down?

A. Well, it is 6,250 feet to the pocket.

The Court:
How far?

The Witness:
6,250 to the pocket.

Q. 6,250 feet to the pocket?
A. Yes, sir.
Q. What way from that pocket do the workings extend?
A. All this dotted—this will answer it. All this dotted area, this stope system has been done since I was made superintendent; the workings extend to the north, east and south.
Q. And since you have been superintendent, the progress marked on the map here with the round dots,—
A. Practically answers it.
Q. And all above—
A. All this dotted stuff was done since 1932.
Q. Since 1932?
A. Since May, 1933.
Q. Now, do these dots here, Mr. Carter, show the distances—first, do these little lines, the little dots show the working stopes you were working prior to May 1, 1941?
A. Yes, sir.
Q. Do you recall about how many production crews or stopes you were working at that time?
A. Fifteen.
Q. Fifteen?
A. Yes, sir.
Q. Was that double shift or single shift?
A. Fifteen on each shift.
Q. Fifteen on each shift?
A. Yes, sir.
Q. That made 30 in 24—
A. Thirty in a day.

Q. Thirty in a 24 hour period?

A. Yes, sir.

Q. Has your work been done, since you have been with the company, on a two shift basis? Has the mine work been done on a two shift basis?

A. Yes, sir, except during the depression, 1932 or '33, we had short time or single shifts, and even closed down at times.

Q. You were trying to spread the work during the depression?

A. Yes, sir.

Q. And during that time you worked less than two shifts?

A. One single shift.

Q. Operated a single shift?

A. Yes, sir, trying to give as many men employment as we could.

Q. Take on this map for an illustration, what is this place on the extreme left of the map?

A. That is the main north.

Q. It is marked there 4900 feet.

A. That is the hauling distance, the travel distance back to the loading station, which is 400 feet up from the pocket.

Q. Was that distance measured straight across—

A. Along the line of travel.

Q. Along the line of travel?

A. Yes, sir. The men travel the haulage way.

The Court:

The men travel that haulage way?

The Witness:

Yes, sir.

The Court:

4900 feet?

The Witness:
Yes, sir.

Q. And the men working here would ride down—
A. 5800 feet.
Q. And then walk 4990 feet?
A. Yes, sir.
Q. The next is 6,050 feet.
A. That is the longest place in the mine; that is 6,050 feet.
Q. What is the name of that place?
A. Sixth west northwest.
Q. And this one here is what?
A. 54 left north.
Q. And the one above marked 5500?
A. Eighth east.
Q. And going around with the map and in a circle kind of—
A. Third right southeast.
Q. Third right southeast is 4950 feet?
A. Beg pardon. That is the Eighth right southeast.
Q. 4950 feet?
A. Yes, sir.
Q. All right, sir.
A. The third right southeast is 5350 feet; second right southeast is 5550 feet; first right southeast is 5750 feet.
Q. All right, sir.
A. Over on the south we had one back here in the south right that is 3500 feet, fourth right east.
Q. All right, sir.
A. Over here on the south, third right south, 5500 feet
Q. Is that from Number 6?
A. All number 6.
Q. That is from the same mine?
A. No, sir,—

Q. Give us those too.

A. Sixth right south, 3300 feet; fourth right south—fifth right south auxiliary 2800 feet, and fifth right south main was 3000 feet and the fourth right south was 1550 feet.

Q. Is that all the working places you have in Number 6?

A. That is all.

Q. Have they continued since then to add working places?

A. Yes, sir, we have made a few changes by shifting one crew to another, but generally—

Q. Generally that is the payout?

A. Yes, sir.

Q. All right, sir. Without going over all those, I will take one as illustrative, to show the others. Take the one that is the longest, 6050 feet. There appears on that 28 minutes. What is that?

A. That was the average walking time determined by the engineers.

Q. Determined by the test Mr. Ball testified about?

A. Yes, sir, the usual time of walking.

Q. I believe there were two of those tests made, do you recall?

A. Yes, sir.

Q. By two different sets of engineers?

A. By two different sets of engineers.

Q. And checked, one against the other?

A. Yes, sir, and averaged it up.

Q. So that time as shown on the other places on that map shows the walking time to the different places?

A. Yes, sir.

Q. Let's see the shortest one?

A. Right here, fourth right east—

Q. Is 1700?

A. 1700.

Q. Now, I wish you would explain to the Court—during that period of time the haulage system of the ore. You have already explained how it gets from the stopes to the rotary dump or pocket. How does it get from there to the surface?

A. Go back to the stope?

Q. Yes, go back to the stope.

A. It is loaded over these chutes or ramps into the cars.

Q. Yes.

A. That car is dropped by an auxiliary hoist or a drum,—got drums places on the mechanical loaders, and lowered or pulled, depending on the pitch going to his side track just as close as it can be located to the loading place. The motor crew comes in there with a load of empties and switches the empties into the side track and pulls the load out and takes them to the pocket. They run in parallel so the motor is always headed in with the loads on it. He drops the loads in the pocket and picks up the empties that a previous motor trip has left there to be passed through the rotary dump, and then he goes on out to the next heading where he is directed by the dispatcher.

The pocket has a capacity of about 500 tons. That ore is hauled to the surface. A couple of skip tenders load that ore through measuring gates into the skips, and it is hauled to the surface by the skips.

Q. What pulls the skips?

A. Double drums, 4 and a half foot face,—Nunburg hoist.

Q. What kind of power is used to operate the hoist? Steam or electricity or what?

A. Electricity.

Q. Electrical hoist?

A. Yes, sir.

Q. What sort of a skip is that the ore is hauled on?

A. Steel skip weighing about 10 tons.

Q. Do you know the dimensions? I don't want the dimensions from the ground to the top—

A. The inside dimensions?

Q. Yes, sir. The others have been given that way.

A. Our general pattern of skip there at Muscoda will average from four feet three inches to four feet seven inches in the back and five feet three inches to five feet seven inches in the front in depth, and they are not quite five feet wide. They are about fourteen feet long.

Q. Did or not the men use the same skip in riding down underground to the manloading station that they use in hauling ore?

A. Yes, sir.

Q. Were the ore and men ever handled at the same time?

A. No, sir, the men were handled alone.

Q. After the men had been hauled, were those same skips put to work in hauling ore?

A. Hauling ore.

Q. Were those skips used for any purpose between the two eight hour shifts?

A. No, sir, except hauling men and ore. Wait a minute. You say between shifts?

Q. Yes, sir.

A. I was thinking about during the shift. We have at Muscoda what is known and called a hauling down crew. They use the skip to haul materials and supplies in the mine. That crew goes on when one crew goes off and works until the other crew comes on.

Q. Is that a split shift?

A. Yes, sir.

Q. Do they work eight hours?

A. They don't quite work eight hours.

Q. In getting the material up in the stopes, is there any time required for the clearing of the stopes, working places, on account of the shooting?

A. Yes, sir. There is a four hour period in there to give time to clear the mine of dust and smoke and powder fumes.

Q. The remaining part of that period is used for putting material in the mine?

A. No, we didn't haul anything out in the mine between shifts. All we hauled was to the timber yard near the bottom of the slope where the motor transportation system could reach it.

Q. All right, sir. Now, then, when and how and by whom was any material, in the general course of business and practice, carried from the timber yard or the place down in the mine where it was stored up to the headings and stopes, anything that was needed up there?

A. Well, it has always been a practice to handle timbers, all heavy material by service crews and haulage crews carrying it into the respective headings. Any heavy material is carried to each individual crew as they need it.

Q. What time of day was that hauled up in the headings?

A. Usually at the beginning of the shift, as a general thing.

Q. At the beginning of the shift?

A. While the men are going to their working places, we get out the material.

Q. All right, sir. Now, I want to get you to conduct us on a tour of the mine that the usual miner takes, and we will take a production man. I am not talking about exceptional cases. I will ask you about those later, but I want the one that is most universally in use by all the men.

Where would that miner come from first when he gets on the company's property?

A. He would come from his home, wherever it might be, and he would first go to the wash house and change.

Q. What kind of wash house is that?

A. It is a central wash house in Muscoda. All three mines change there.

Q. Where is it located?

A. In front of and between 4 and 5 slopes.

Q. Is it indicated on the map there?

A. Yes, sir.

Q. Point out to the judge where it is.

A. Right there (indicating on T. C. I. Exhibit Number 1).

Q. About how far is that from the entrance to Number 6?

A. 2325 feet.

Q. 2325 feet?

A. Yes, sir.

Q. And how far is it from Number 4?

A. It is 750 feet from Number 4.

Q. And how far from Number 5?

A. 730 feet.

Q. How long has that wash house been in that particular place and about when was it built, do you know?

A. Oh, it was built way back in the teens somewhere.

Q. All right, sir.

A. It was rebuilt and enlarged sometime back about 1926 or '27.

Q. All right, sir. You can sit back there.

Now, I wish you would describe that bath house just in a general way.

A. We use the hanger system.

Q. Yes.

A. The men are provided with hangers which they can put their mine clothes on; take their mine clothes off and put their clean clothes on, and they pull them up in the top of the bath house.

Q. On pulleys?

A. Yes, sir, clear of everything on both sides. We have showers adjacent to that on each side. We have separate sides for white and colored.

Q. When the man comes back from the mine he lets his clothes down—

A. Pulls his mine clothes off, lets his clean clothes down and puts them on, and puts his muckers, mine clothes, on the hanger, and pulls them up.

Q. Has there been any charge made for that service?

A. Now since I have been superintendent.

Q. Are the men compelled to use the bath houses or can they use them or not as they see fit?

A. They can use them or not as they see fit.

Q. I will ask you what proportion uses them.

A. 99 percent, maybe more.

Q. 99 percent, maybe more?

A. At Muscoda. I am talking about underground crews.

Q. The underground crews?

A. Yes, sir.

Q. All right. Now, if you don't mind telling me, what was the number of the underground crews, if you can give it to me, at Number 6, the normal crew? Of course, I know it varies.

A. The normal crew at Number 6 is about 550 men, double shift.

Q. Underground?

A. Underground.

Q. And at Number 4?

A. About 450 men.

Q. And the limestone mine?

A. We use about 75 men on day shift only.

Q. On day shift only?

A. Sometimes a few men went in there at night.

Q. You work a day shift only?

A. Yes, sir.

Q. Can you tell us what proportion of the men at Number 6 are service crews as distinguished from what you call production crews?

A. About 60 percent.

Q. About 60 percent?

A. Only about 40 percent of the men are actual producing men.

Q. What is the proportion at Number 4?

A. About the same.

Q. About the same, and what is it at Number 5?

A. Five is altogether difference. Five has only—there are about only 16 percent of service men there.

Q. At Five?

A. Yes, sir.

Q. Those proportions have been pretty well prevailing over this period?

A. Yes, sir.

Q. That is about the proportion?

A. Good, average figure.

Q. Now, then, this miner we are talking about, the usual miner, after he gets his clothes changed, where does he go next?

A. Gets carbide there at the carbide house at the wash house.

Q. Was the carbide house at Muscoda located at the wash house?

A. We built it in 1937 at the wash house at a central place where the men could get their carbide.

Q. Where was it prior to 1937?

A. We issued carbide at each slope before 1937.

Q. Before 1937?

A. Yes, sir.

Q. In 1937 you put one place—did you build a building?

A. Built a building, yes, sir.

Q. Does it adjoin the bath house?

A. About thirty feet from it.

Q. All right. Explain to the Court how that man gets his carbide and how it is paid for?

A. He puts an empty can in the window, and this carbide man issues a full can, and it is checked off on his sheet by his number.

Q. How does he get the number?

A. It is furnished by the accounting department—

Q. I know, but—

A. The man calls his number to him.

Q. The man calls his number to him when he gets the carbide?

A. Yes, sir.

Q. And he checks it on his list?

A. Yes, sir.

Q. What size can is that at Muscoda?

A. Pound can; holds a pint.

Q. Does the average miner get carbide every day?

A. No. A few men get it every day, but the average miner would get it every two or three days.

Q. Every two or three days?

A. That is the average.

Q. Average?

A. Yes, sir.

Q. You know by checking the requisitions and watching it and checking it that is the average?

A. That is the average.

Q. What amount of time, Mr. Carter, would you say is consumed by this individual miner in getting his carbide?

A. Well, it shouldn't take him more than half a minute. He puts a can in the window and he shoves him a full one.

Q. Who pays for the carbide?

A. This man does.

Q. How is the payment handled?

A. It is charged through the office against his account.

Q. Is it charged for profit? If so, how much?

A. It is sold at cost.

Q. Sold at cost?

A. Yes, sir.

Q. Is there any obligation on the man as far as the company is concerned to buy it from the company?

A. None at all. He can get it where he pleases.

Q. He can get it where he pleases?

A. Yes, sir.

Q. Do commissaries and stores there in the district sell it?

A. I don't know.

Q. Is it true, like the bath houses, most of the men get their carbide at the mine?

A. I presume most of them get it there.

Q. What percentage of the men?

A. What percentage of the men?

Q. Yes, going underground.

A. Practically all of them except the haulage crews that are in lights all the time.

Q. What they do with that can?

A. Put it in their pocket. A great number wear a scabbard—

Q. Wear what?

A. A scabbard on their belt and put it in it.

Q. Carry it with them all the time?

A. Yes, sir.

Q. Some of them carry it—

A. Put it in their pocket.

Q. You are not talking about this big pocket in the mine?

A. No, sir, their pants pocket.

The Court:

Is that can round?

The Witness:
Yes, sir,—oval.

The Court:
Oval?

The Witness:
Yes, sir.

Q. Has that been the custom with reference to carbide so long as you have been working around the mines?
A. Carbide?
Q. Yes.
A. Yes, except before we moved it to the carbide house we issued it at the slopes.
Q. I know, but the method of issuing has been the same?
A. Yes, sir.
Q. The man is the judge of how much he wants and how much he uses?
A. Yes, sir.
Q. Some of them use it more sparingly than the others?
A. I would say so.
Q. After the man has gotten the carbide, this individual miner, what does he do next?
A. He goes to the slope and puts his brass check in.
Q. What is this brass check?
A. It is a check with his badge number on it.
Q. Is that assigned to him when he is employed?
A. Well, it is given to him for identification.
Q. Is it given to him when he is employed?
A. Yes, sir.
Q. Is he carried on the rolls by name and badge number?
A. Carried on the rolls by name and badge number. Everything has his name and badge number on it.

Q. The time keeping books and everything show both his badge number and his name?

A. Yes, sir.

Q. When he hands in his check when he starts to go down in the mine, what is done with it and when?

A. It is hung on the board. He is checked in generally by the mine foreman, and his brass check is hung on the board by the mine foreman or timekeeper in there. It is lined up opposite his crew.

Q. It is hung up at the minute he hands it in, or at some later time, or is there a variance in there?

A. He puts it in and it is hung up as quickly as it can be hung.

Q. Where is it hung on the board?

A. Our board is marked off in crews, fifth right northeast, seven right northeast. The man comes in and hands in his badge and it is put on his crew. Our service men—

Q. If some particular individual does not show up who is in a particular crew, then there would be a vacant place left on the board?

A. Yes, sir.

Q. Is that checked by the mine foreman?

A. Yes, sir.

Q. How would he supply that vacancy?

A. He would take a man off the service crew and send him to fill up that man's place in the heading crew.

Q. How would he do that, phone down or what?

A. When he got to the bottom he usually filled the crews out.

Q. When he got to the bottom he usually filled the crews out?

A. Yes, sir.

Q. Was that the general practice?

A. Yes, sir, or if a man knew he was going to be off and told the foreman, and he would say I know so and so, he would say get him and put him on the board.

Q. That would be where they knew a man was going to be off?

A. Yes, sir. He would get this man and put him on the board.

Q. All right, sir. Now, in addition to keeping—supplying vacancies in the crews, what other reason was there for keeping a record this way of who was in the mine?

Mr. Harris:

We object to that, if the Court please.

Mr. Burr:

I don't see—

A. Well, it is used in the distribution system. The accounting department would know—we would know where to charge this work to, what proportion of men were out on certain work, whether it was a service or production crew.

Q. Is it used to check up who is in the mine in cases of emergency?

A. Yes, sir. When the man checks out and fails to pull his check, we would investigate.

Q. To see if he was left in the mine?

A. Yes, sir.

Q. And if a man comes out of the mine on account of sickness or anything—

A. He would get his tag.

Q. And check out in that way?

A. Yes, sir.

Q. All right, sir. When this man has handed his check in the next thing he does is to get on this skip, is it?

A. Yes, sir.

Q. Prior to May 1, 1941, I wish you would give the Court the way the skip was handled. Was there or not first, any trial trip made of the skip before the men are put down?

A. Not with us. We had this material handling crew and slope track crew working between shifts. It wasn't a case with us we had to run a safety test.

Q. You didn't have to run a safety test?

A. No, sir.

Q. What time did your first trip go down for the men?

A. Six o'clock.

Q. Six o'clock?

A. Both shifts.

Q. About how many runs did you have to make to get the men in the mine?

A. About six.

Q. How long did it take?

A. Six is a double track. When one skip is going down the other is coming out. We would run about every six minutes.

Q. What time would you say the last skip started down?

A. About 35 or 40 minutes after the first one. We got the men in generally in 35 to 40 minutes.

Q. Did the men get down in the mine or not in time to reach their working places where they worked,—talking about the production men first,—by 6:45 or not?

A. Nearly all of them. It depended on how far they had to go. The average we tried to figure would get there around 6:45.

Q. Did some of them get to their working places before 6:45?

A. They might have and some afterwards.

Q. And some afterwards?

A. Yes, sir.

Q. At what time did their pay begin?

A. Well, they were supposed—it was an eight hour job. They were to be at their working places, an average—start work,—that is the heading crews,—around 6:45.

Q. When is the juice cut on there?

A. Our generator sets are set automatically and come on at 6:30.

Q. They come on at 6:30?

A. Yes, sir.

Q. You say it is automatically set. Explain what you mean by that.

A. By a time clock. It turns it on automatically.

Q. What time does it cut off?

A. About 3:10 or 3:15, after the shift is over.

Q. All right. When the crew gets up there, say around 6:45, what do they do? What do they begin to do?

A. The drill crew?

Q. I am talking about the producing crew, the average producing crew.

A. The drill crew starts to quarrying out and setting up, and starting to drill.

Q. By quarrying out you mean to see if there is any loose material?

A. Any loose material where they are going to drill, and get their pipe lines up, their hose arranged, and get their drill outfit set up.

Q. That is the drill crew?

A. The drill crew.

Q. The drilling part of it?

A. The other part of the crew starts to move the mechanical loader into position where they are going to drag that day, and drag the ropes up in the stope or face, and stick their hangers and hang up the skidder blocks.

Q. All right. How does the work progress from there on until quitting time?

A. Well, the drill crew drills out its round during the day. At the end of the drilling round, or near it, the drill helper,—usually after they have finished,—goes to the nearest powder magazine and gets powder and brings it back and loads the holes, and at 3:10 they shoot.

Q. Let's stop right there at the powder. Where do they get the powder from?

A. Nearest powder magazine.

Q. You have more than one powder magazine at Number 6?

A. Have two main magazines and two sub-magazines. By sub-magazines I mean a magazine that serves one place alone.

Q. Are those magazines moved from time to time?

A. They all are moved. As the work progresses we shove the magazines up to get them as near the men as we can.

Q. Who gets the powder

A. The drill man or drill helper.

Q. How does he get it?

A. He has a requisition from the head miner. He goes to the powder house and the powder man issues him the powder and caps and fuse.

Q. How does he carry it?

A. In a leather or fabricoid bag.

Q. Does the head miner send one man or two men to get the powder?

A. If he has a good deal of powder to shoot he sends two men.

Q. Is that requisition sent down to get the powder on the company's time or the men's time?

A. It is during the working hours.

Q. How does that powder get down to these magazines?

A. Brought down from the surface to the timber tunnel and set out and hauled to the magazines by the motors and put in the magazines.

Q. Is there a man at the powder house to issue it?

A. We have two powder men on each shift. One goes over to these sub-magazines at a certain time and issues it.

Q. Has a regular time to go to that substation?

A. Yes, sir.

Q. Is that powder kept locked?

A. Kept locked.

Q. How is that powder magazine built?

A. We take an old heading and wall it up with stone walls in back and leave the ventilation open and put a section in front of that with a heavy door. Inside that we have a separate compartment where we stack the powder.

Q. What is that separate compartment made of?

A. Tin or galvanized iron.

Q. Tin or galvanized iron?

A. We have made them of rock, but we prefer tin or galvanized iron.

Q. You say the drill men do the shooting. That is what part of this crew?

A. The drill man and drill helper, and the head miner stays with them until they blast.

Q. What time did you say they shoot?

A. Shoot at 3:10.

Q. During that time what has the loading part of that crew been doing?

A. Been handling ore, dragging ore, loading cars,—dragging ore and loading it into the cars.

Q. The ore they loaded, what shift is that shot down?

A. The previous shift.

Q. The previous shift?

A. Except where we have a change day, and then that shift comes back on there on ore they have shot down.

Q. That is where you change shifts from day to night?

A. Yes, sir.

Q. You say, though, the last thing a crew does is shoot?

A. Yes, sir, and the succeeding crew loads that ore that they have blasted.

Q. Does the loading part of the crew—do they stay in the stope during the time the shooting is done?

A. No. They leave at three or before.

Q. They leave before the shooting is done?

A. Yes.

Q. How long would you say usually on an average the loading crew would leave the stope before the shooting is done at 3:10?

A. Generally they always leave before three or around three.

Q. Before three or around three?

A. Yes, sir.

Q. Is that the last work they do; do they have any more work to do?

A. Nothing except to go out.

Q. No work to do except to go out?

A. No, sir.

Q. You say their work stops when they leave the stope?

Mr. Harris:

We object.

Q. Do they have any more work to do at all?

A. Not a thing.

Q. After leaving the stope, where does the loading crew go?

A. Goes to the loading station.

Q. What do they do when they get to the loading station?

A. Catch the skip and go out.

Q. What time does the first skip run?

A. Starts about 3:15, maybe a little before that, but the usual time is about 3:15.

Q. Did it go out at the same intervals it came in?

A. Yes, sir.

Q. How was it decided what skip the men would ride on?

A. We took them as they came, except in certain instances were we had a hoisting crew, they were allowed to go out first, because they came in and started work near the loading station and got to work about 6:30 or 6:35. We allowed them to catch the first trip out.

Q. That was a loading crew?

A. Hauling crew.

Q. What time did they stop work?

A. Three o'clock or before.

Q. Was there any rule or custom as to what time that crew had to have the motors ready?

A. No, sir; they were supposed to start at 6:45, but they were at their motors and started between 6:30 and 6:45 without any objection being made. They finished their work by three and we let them on some occasions catch the first skip out.

Q. What I was asking was this: Was there any set hour they had to bring their motors out at the end of the shift?

A. They all had to bring them back around the pocket.

Q. What time are they there?

A. Around three o'clock.

Q. When they—they put them in for what purpose?

A. When they put them in they are through. When they check the motors in they are through.

Q. What I asked you, what happens to the motors when they put them in there?

A. They stay there until the next shift.

Q. They stay there until the next shift?

A. And in one mine they will come in and be checked the first thing in the morning,—both mines, as a matter of fact. We send two motors out handling steel and material. The others check in and go over to the pit for doping, oiling and preliminary checks.

Q. Then, after a man rides the skip out he goes to the change house and changes his clothes and goes through

the same procedure the next day, and that is how it is handled?

A. He goes to the tally house and gets his check and goes to the wash house and changes clothes.

Q. Now, Mr. Carter, I wish you would tell me there at Number 6 during the period of time I have been asking you about,—I wish you would give me first the list of the supplies that we group as heavy materials, you might say, that remain in the working places all the time.

A. You mean supplies and equipment?

Q. Yes, supplies and equipment.

A. All right. Machine loader—

Q. Now, wait a minute. What is the mechanical loader?

A. That is the double drum hoist or triple drum, in some cases, hoist for moving ore from the broken ore into the cars.

Q. Up over that ramp and into the cars?

A. Up over that ramp and into the cars.

Q. When was the mechanical loaders, the installation of them at the Muscoda mine—

A. In 1923.

Q. Do you know whether they were installed there before—

A. They started at Muscoda before they installed Ishkooda and Wenonah.

Q. Have you been using mechanical loaders at Muscoda since 1923?

A. Yes, sir.

Q. All right. What other equipment stays in the stopes?

A. The drag ropes that go on this mechanical loader. We call it a drag. The skidder blocks—

Q. Wait a minute. You are getting too fast for me. Muscoda is different from these other mines in some instances, and I want the Court to get it all. What are the ropes?

A. Seven-eighths inch steel cables placed on these drums on the mechanical loader, and placed through the skidder blocks and one end attached to the front end of the scrape and the other end to the back end of the scrape.

Q. What is the skidder block?

A. It is a big pulley, and weighs about 120 pounds.

Q. What are they made of?

A. Steel.

Q. How many to each crew?

A. One.

Q. What is next—

A. You are talking about the heavy material?

Q. Nothing but that.

A. The next would be an auxiliary fan used in some places, depending on the working place.

Q. What is this auxiliary fan, what is it made out of?

A. Four horse power fan, blows 2800 feet a minute at 400 feet. I think that is the capacity. We hang a tube along the wall and blow fresh air into the face.

Q. Where it is needed?

A. Where it is needed.

Q. In what proportion of the stopes do you use those fans?

A. We use them intermittently at all places, but where the stope is driven ahead of the ventilation, we use it.

Q. You use the fan to act as an auxiliary ventilation?

A. Yes, sir.

Q. Where the ventilation has not advanced with the stope?

A. Yes, sir.

Q. What is the next thing?

A. There is tubing that goes with it, it is flexible tubing.

Q. What is that made out of?

A. Fabricoid or rubberoid substance. We have used two or three different makes of it.

Mr. Harris:

What is that? I couldn't hear you.

The Witness:

We have used two or three different makes of it. It is supposed to be noninflammable.

Q. What is the next material used?

A. We have an auxiliary hoist that is left back at the heading.

Q. Is that in all of them?

A. Nearly all of them.

Q. What is this auxiliary hoist?

A. Well, in nearly all those stopes in Number 6 it is flat enough the cars will not run back. On these mechanical loaders we have a third drum and hang the cable to that and pull the cars back. Sometimes we don't use the third drum, just use the hoist engine.

Q. Is that used by the production crew?

A. No, sir. The hoisting engineer is a service man.

Q. The production crew has nothing to do with that hoist?

A. He is in there with them, but he is not carried as a part of the 7-man crew.

Q. Anything else the production crew has to use in the way of heavy material?

A. Drills.

Q. What are those drills?

A. You mean about the size?

Q. Yes.

A. In Number 6 they are Denver 17s, 4-inch, weigh about 186 pounds.

Q. They are on tripods?

A. On tripods.

Q. They are operated by whom?

A. By the drill crew. They are pneumatic drills with steel attachments.

Q. For what purpose are they used?

A. Drilling the rounds.

Q. Drilling the holes?

A. Yes, sir.

Q. What do you use in the drills?

A. Inch and a quarter hollow round steel.

Q. Is that steel always in the heading?

A. It is delivered there every day, every morning.

Q. Now, you have already mentioned about the air and water hose. Is that connected with the heavy drill?

A. Yes, sir.

Q. All right. Is there anything else you use that stays there in the headings?

A. You have quarrying bars which are changed out as they get dull by the miners themselves. They go to the magazine and swap a dull one for a sharp one.

Q. Anything else? How about your jackhammer, drag, scraper?

A. There is a small jackhammer in the place for drilling hanger holes, or if we have to pop a hole, we can do it.

Q. How about the drag scraper?

A. I thought I mentioned that a while ago.

Q. I don't know whether you did or not.

A. The drag scraper loads the ore.

Q. That is your heavy stuff?

A. Heavy stuff, more or less permanent. I wouldn't call a quarrying bar permanent. They swap that out occasionally.

Q. Let's leave the quarrying bar out, then. This other equipment is what you call heavy equipment?

A. Yes, sir.

Q. In the average stope?

A. Yes, sir.

Q. And heavy equipment?

A. Yes.

Q. I haven't asked you yet. What is the crew of the average stope, we will say, first, since the incentive plan went into effect?

A. Head miner, one drill man, drill helper, drag operator and two section helpers.

Q. That is a 7-man crew?

A. Yes, sir.

Q. Previous to going into the incentive plan, what had been the crew?

A. It had been a nine-man crew with two drill helpers and three section helpers or muckers.

Q. I might ask you right there, what has been the amount of production, comparing the seven-man crew with the previous nine-man crew for eight hours work; has it been greater under the incentive plan, or less or about the same?

A. It has been greater.

Q. Now, I want you to explain to the Court, Mr. Carter, how all this permanent equipment you have mentioned, that is, the mechanical loader and skidder block, ropes, auxiliary fan and the tube that goes with the fan, the drag scraper, the drills, the drill steel and the air and water hose, how you ordinarily—the things that I have mentioned to you, got into the mine?

A. They were delivered in by—carried to the slope by service trucks and carried into the mine by material handling crews and carried out to the headings by one or another service crews, the haulage crews, usually.

Q. Have the production crews ever had anything to do with getting that material I have just mentioned to you up to the working places, or is that done altogether by the service crews?

A. Done by the service crews unless they take a heading crew on an off day and make a service crew out of them.

Q. I understand that. Of course, when you do that, that is a service crew.

A. Yes, sir.

Q. Where is that material kept outside at Muscoda?

A. At the warehouse, electric shop, blacksmith shop, machine shop.

Q. How is it issued outside from those various places, the various shops and the warehouse?

A. Issued on the requisition of the mine foreman to the warehouse or shop.

Q. The mine foreman makes out a requisition to the warehouse or shop, and how is that filled?

A. The warehouse takes it and passes out whatever the order calls for and delivers it on the truck.

Q. Delivers it on the truck to where?

A. To the slope.

Q. Who handles it to the slope?

A. The surface crew.

Q. That is a service crew?

A. Yes, sir.

Q. Where do they deliver it at the slope?

A. At the mouth of the mine.

Q. And then what is done with it?

A. The haulage crew hauls it down in the mine.

Q. Then what?

A. It is taken out to the various headings by the service crews.

Q. I have been asking you about Six, but the same thing applies to Five and Four?

A. Well, Five has a little different material.

Q. I know you have different material, but the—

A. The same system applies.

Q. You have some other material—First, let me see if I understand this: Of the heavy material which you have mentioned, I will ask you to state what part of the production crew uses the following items: Drills, drill steel, the air and water hose,—who uses that?

A. The drill crew.

Q. The drill crew?

A. Yes, sir.

Q. Who uses the drag scraper, the skidder blocks and ropes attached to them?

A. That is the other part; that is the drag—

Q. That is the loading part of the crew?

A. Loading part of the crew.

Q. Of course, the auxiliary fan furnishes air for everybody?

A. Yes, sir.

Q. Now, then, what other material other than that—

A. Wedges, hangers—

Q. —is used in the stopes, in the working place?

A. Wedges,—we have hangers, wedges, C-hooks, oil and dope.

Q. Anything else?

A. Quarrying bars. I mentioned that a while ago.

Q. Does that cover the—

A. I think that covers it.

Q. These hangers, tell the Court what a hanger is and how it is used at Muscoda.

A. Well, a hanger is, I should say, about a foot long, and will weigh ten or eleven pounds, tapered on the end, put in a hole drilled with a jackhammer and wedges in place by steel wedges, hammered in so it will pull back and lock. It is hung in the rib at convenient intervals so the C-nook can be hung in it. That is a hook shaped like a "C".

Q. I understand that—

A. And the skidder block hangs in that.

Q. What is this hanger made of?

A. Steel.

Q. What is this C-hook made out of?

A. Steel.

Q. What size are the wedges?

A. I would say about four or five inches long, about an inch and a half wide, and taper from a quarter of an inch to down to a point.

Q. The C-hook, what is that made of?

A. It is made of steel. We have had two or three different sizes and it is getting heavier all the time. The one we are using now weighs about 18 pounds. I would say it is about 18 inches long, 7/8 inch wide at the widest part, possibly an inch and a quarter of an inch and a half in diameter,—in thickness.

Q. What part of the crew are these hangers, wedges and C-hooks used by?

A. By the drag crew.

Q. By the loading part of it?

A. Yes, sir.

Q. Now, Mr. Carter, during the time you have been there at Muscoda, has, at different times, different customs prevailed as to how these hangers and wedges and C-hooks are handled about getting them to the working place?

A. Yes.

Q. Now, let's take the first custom.

A. We originally had the hangers and wedges and C-hooks sent into the mine and delivered to the timber tunnel.

Mr. Harris:

I couldn't hear you.

Mr. Burr:

Delivered to the timber tunnel.

The Witness:

Delivered to the timber tunnel at the bottom of the slope.

Q. What was done with them from there?

A. From there they could be sent to a heading, and if a head miner wanted some he could, which they frequently did, come by there and get them and take them

out. We had that system through 19—after we put the incentive plan in,—

Q. Wait a minute. You are going a little too fast for me. How long did that system exist? Was it changed before—.

A. Before and a short time afterwards.

Q. A short time after the incentive plan went into effect?

A. Yes, sir.

Q. What happened in reference—withdraw that question. Where is this place where you say they were taken down, this timber tunnel?

A. The timber tunnel? It is about 150 or 200 feet below where the men get off and where they all passed going to work.

Q. They were brought down to that point by what crew?

A. By the haulage crew or timber handling crew.

Q. How did they bring it down?

A. On a larry attached to the skip.

Q. Was there a platform or running board there where you unloaded them?

A. It wasn't exactly a platform. There was a wide space there where the drag can come alongside. It is in a timber storage space. It is a wide space there alongside the slope.

Q. Was that or not the general place where all the other material was delivered?

A. Usually.

Q. That includes heavy material and everything else?

A. Yes, sir.

Q. From there, then, during the period I first asked you about, and until a change was made, it was carried by whom from there up to the working places?

A. Well, if a head miner called for it, it was sent out to him by motor, or he could send and get it.

Q. Send from his place and get it?

A. Yes, sir.

Q. Did they do that?

A. Did that, and also came by and got it.

Q. When they came by on the way to their work they came by and got it?

A. Yes, sir.

Q. After the incentive plan was put into operation, state whether or not the habit and custom of the men to stop by and get it increased or diminished?

A. It did.

Q. Which did it do?

Mr. Harris:

Which did it do?

A. It increased. We had a good deal of trouble keeping supplies of that kind, wedges and C-hooks over there after the fall of 1936. It got so when this material crew would bring it down one shift would get all of it.

Q. The first shift there—

A. The first shift there got it.

Q. And would take it up to their working places?

A. The next shift wouldn't have any. We had continual kicking and complaints about it by the men, and the mine foremen put the pressure on me to do something about it. That continued through 1936 and 1937, and we finally decided, at the request of the mine foreman, and the men asked him to do it,—we started issuing—

Q. Did the mine foremen ask you to change the system?

Mr. Harris:

Wait a minute. I don't think a conversation between him and the mine foremen is admissible.

The Court:
I will let it go in.

Mr. Burr:
I am trying to get what happened.

The Court:
Yes.

Q. Go ahead, Mr. Carter.
A. The mine foremen asked me to find some central place—
Q. The mine foremen—

Mr. Harris:
We still object.

The Court:
He is not telling what they said.

Mr. Harris:
Mr. Burr puts in his mouth what they said.

Mr. Burr:
You are objecting to that? That speech might be all right before a jury. It is not necessary for me—

The Court:
In a way it expedites the trial.

Mr. Burr:
If I tried to put it in this man's mouth, he would spit it out, if I tried to put it there.

Mr. Harris:
The point I am making, a conversation between a mine foreman and him wouldn't be admissible unless these men were present.

The Court:
He was not asking what the mine foreman said.

Mr. Harris:
I understood he did.

Mr. Burr:
I haven't asked it yet. I am going to put the mine foreman on the stand.

Q. The mine foreman had a conversation with you and asked you to make the change?
A. Asked me to make the change.
Q. When was the change made?
A. I made the change in the first part of 1938. I started issuing wedges and hangers and C-hooks from the carbide house on a requisition. The carbide man could not issue any of them except on a requisition from the mine foreman.
Q. What were those items you issued there beginning in the first part of 1938?
A. Hangers and wedges and C-hooks.
Q. Is that all?
A. That was all.
Q. That was all. That would be done, you say, on a requisition given by whom?
A. The mine foreman to the head miner.
Q. And what did the head miner do with that requisition?
A. He would either go by there or let one of his crew go by there and fill it and take it to the slope and carry it down.

The Court:
I think we will take a little recess.

Mr. Burr:
Yes, sir.

(Thereupon proceedings were in recess from 10:50 A. M. to 11:05 A. M., at which time proceedings were resumed as follows:)

Mr. Burr:
Shall I go ahead, Your Honor?

The Court:
Yes, sir.

Q. Mr. Carter, when we took the recess you were on what—you were telling us that in 1938 the men were allowed to get this material on requisition at the carbide house—

A. Yes, sir.

Q. —That you have named?

A. Yes, sir.

Q. After they turned in those requisitions, what became of those requisitions; who did they come to?

A. They were filed in the carbide house; and the wash house foreman, the surface foreman would get those requisitions and bring them to my office, or I would go up there and get them.

Q. Did they come to you?

A. Yes, sir.

Q. Did you check them?

A. I did check them.

Q. Did you preserve them any length of time?

A. We did not. What I was checking them for was to see if we were saving money.

Q. In checking those requisitions, I will ask you to state to the Court whether or not those requisitions would show—the same requisitions would cover hangers, wedges and C-hooks, or did they cover any part of those?

A. The average requisition—the general requisition issued by a mine foreman called for about four hangers and 25 wedges.

Q. About four hangers and 25 wedges?

A. That is a general requisition. Sometimes there might be more, six hangers and 35 or 40 wedges. The general requisition would be four hangers and 25 wedges.

Q. Would there be C-hooks on those requisitions?

A. They came separately and asked for one or two.

Q. How often would a requisition come in for hangers and wedges?

A. The average crew got requisitions for hangers and wedges two or three times a month.

Q. Two or three times a month?

A. Yes, sir.

Q. Now, do you know whether or not when those requisitions were presented there and honored at the carbide house for wedges and hangers, would they be presented by the entire crew or part of the crew?

A. One man would put it in and get them.

Q. Where did he take them when he got them?

A. They took them to the mine. Maybe one man or two or three men would carry them. One man would have the requisition.

Q. He would be helped by other members of his crew?

A. Yes, sir.

Q. About how many would take them?

A. I don't know. A hanger would weigh about eleven pounds. They might divide them up among two or three men, or one man would take them.

Q. I am trying to find out if the entire crew ever took them?

A. I don't know about that.

Q. You don't know?

A. No.

Q. Now, about the C-hooks, how often were they requisitioned?

A. Once or twice a month.

Q. And for one or two?

A. Yes, sir.

Q. And did one man carry them, or two?

A. I don't know. They were issued there.

Q. Did you check those requisitions,—you said you did it,—to see whether or not the requisitions were saving money for the company? Can you state, from checking those requisitions, about how much reduction you found in this material that was being used down below?

A. I don't remember how much it was. I didn't keep checking on them. For the first few months I found we were cutting our cost about 50 percent on hangers and C-hooks and satisfying the crews. I didn't pay any more attention to it.

Q. You said you cut the cost. You mean by reducing the amount that was used?

A. Reducing the amount that was used.

Q. That is what you found out?

A. Yes, sir.

Q. How did these men, after this central method of handling these C-hooks and wedges and hangers was put in,—how were they carried down to the unloading station?

A. We started out by putting a pail or bucket,—a tray, rather, under the bail of the skip.

Q. Describe that tray.

A. It was about three feet long, about one foot wide, and about a foot deep, made of 3 8 inch iron with straps to hang on the bail of the skip.

Q. Where is the bail on the skip?

A. There are two side members that attach in the middle on the back end of the skip and come around here. It holds the door of the skip, which is on top, in position while the ore is being hauled.

Q. You fastened this bucket or tray on top—

A. Underneath the bail.

Q. This material was hauled in this basket?

A. Yes, sir. Not only put in this basket, but could be carried on the bail. If the basket was missing, they could put them on the bail. They were not supposed to carry any heavy material in the skip.

Q. I am talking about these three articles.

A. Carried on the bail or in the basket.

Q. Where were they taken off the skip?

A. At the man unloading station.

Q. Who took it off?

A. The man that put it in there.

Q. Did that man, with the help of his crew, carry it to his working place?

A. Yes, sir.

Q. From there?

A. Yes, sir.

Q. That was the way it was handled from then on?

A. Yes, sir.

Q. Has there ever been a time at any time—did you have just one pail or one bucket, or did you have one for each crew? Did all of them handle it in that same way?

A. All of them handled it in that same way.

Q. That was big enough to carry it for all the crews?

A. Yes, sir.

Q. Did all the crews get this material on the same day?

A. No.

Q. Just get it as the head miner needed it and issued requisitions for it?

A. Yes, sir.

Q. Mr. Carter, has there ever been a time when any material, light or heavy or any kind of material, would be sent by you to the working place if the head miner requested it be sent there?

Mr. Harris:

We object as calling for a mental operation, what would have been done if they had requested it.

The Court:

Yes.

Q. Did you send it to them when they requested it?

A. Yes, sir.

Q. And after this system was put in it was often requested?

Mr. Harris:

We object.

Q. Was it sent to them or not? I don't want to lead you.

A. They would get it or we would send it there. It was optional with the crew.

Q. I see. Now, I believe I have asked you about all the methods—the method of handling all the material that went into the production stope, except I passed temporarily the jackhammer.

A. The jackhammer steel.

Q. Well, first, the jackhammer.

A. The jackhammer is part of the heading equipment. It doesn't come out except when it needs repairing when it is taken out by the service crew and sent back the same way.

Q. The jackhammer stays there except when it needs repairing, and then it is handled by the service crew?

A. Yes, sir.

Q. Now, about the jackhammer steel—I know that is different and I want you to tell us about that.

A. Once, twice or three times a month, this jackhammer steel, which is about 18 inches long,—I suppose a bunch of five would weigh about 15 pounds. We had

trouble with the men getting them just like we did the others. We started the practice of one member of this heading crew bringing out at the end of the shift this bunch of jackhammer steel, and he would hide them somewhere about the mouth of the mine, and the next morning take them to the blacksmith shop at 6:30,—the blacksmith shop was not open until that hour,—and swap them out. If he didn't have them to swap out, the mine foreman would give him a requisition.

Q. What time could the man exchange that jackhammer steel?

A. At 6:30.

Q. That is when that shop opened?

A. Yes, sir.

Q. Then what did he do?

A. He generally waited and caught the truck to the slope and that made him late.

Q. What happened?

A. He just got to his working place late. He quit at three o'clock.

Q. How did the jackhammer steel get down, Mr. Patterson suggests, in the mine?

A. This man would bring it back.

Q. The one that swapped it in would take the new steel back?

A. Yes, sir.

Q. How did they get it down the skip?

A. Put it on the bucket.

Q. Put it on that same tray you were talking about?

A. Yes, sir.

Q. There is just one other thing I haven't asked you about that you said was used down in the mine. That is the oil, as I recall. How was that handled, and were any changes made in the way that was handled?

A. Number 4 and 6 were operated differently on oil. Number 6—I suppose you want both of them?

Q. Yes.

A. Number 4 keeps a barrel of oil—

Q. I can't hear you, Ewing.

A. Number 4 keeps a barrel of oil and a barrel of dope scattered out in the headings, two or three barrels at every heading at a central point. The crews go and get it whenever they need it.

Q. That is Number 6 or Number 4?

A. Four. Number 6 keeps a barrel at every heading,—one barrel at every entry heading, but keeps the dope at a central point near the timber tunnel. About once a week the drag man—he is the one that wants dope,—takes a container and fills it and carries it to the dispatcher and has it sent to his heading.

Q. On a motor?

A. On a motor.

Q. The oil, they get it during the working hours as they need it?

A. It is there fairly close. He goes down to that barrel with a one-gallon can and gets what he needs.

Q. I see. Now, up until—how long has that system of handling the oil been in effect there?

A. I don't know; for some time.

Q. Ever since you have been there or not?

Mr. Harris:

We object to him leading.

Mr. Burr:

I am not. I said, "Ever since you have been there or not?" I am not trying to lead him at all.

A. It has been for three or four years anyway.

Q. Was it handled differently for three or four years where the men got the oil?

A. We tried to keep enough barrels and keep them scattered. We may have had more or less barrels.

Q. Was the same general system in effect all the time?

A. Yes, it was.

Q. When did the eight hour system go into effect at Muscoda?

A. '33.

Q. '33?

A. Yes, sir.

Q. Do you know whether that went into effect the same time the Coal Code went into effect, about that time?

A. Went in when the N. R. A. went in. We had been down and Muscoda opened up on the eight hours.

Q. All right. Since that time tell the Court whether or not the computation of time for the men's pay, both production and service crews, has been on eight hours, the computation and payment of wages from that time on?

A. Yes, sir.

Q. Until May 1st?

A. Yes, sir.

Q. Was there included in the pay or the computation during that period of time any time spent in traveling, either down the main slope or going to their working places?

A. No, sir.

Q. Now, prior to the eight hour day what hours were worked?

A. Ten hours.

Q. Now, when the ten hour system was in effect, was there any time spent in traveling included in the computation of the day's work and payment of wages?

A. Supposed to be ten hours of work.

Q. Whereabouts?

A. At the working place.

Q. I will ask you to state whether or not since your connection with the Iron Ore mines, from the time you went there until May 1, 1941, if the computation of wages

has always been on the face to face basis or portal to portal?

A. Ten hours are the working face.

Q. Has it ever included any traveling time?

A. No, it has not.

Q. During the period of time that you have been there as superintendent, have the employees both individually and through committees presented their complaints or grievances to you as superintendent—

A. Yes, sir.

Q. Freely?

A. Yes, sir.

Q. Not leading you, but just to expedite the case, as I understand the Smelters Union was organized in 1933. Is that right?

A. That is right.

Q. And then when did the Brotherhood come in, if you recall?

A. 1934, I believe.

Q. 1934, and do you recall about when the Brotherhood affiliated with or was absorbed by the Red Ore Local affiliated with the American Federation of Labor?

A. 1939 or the first part of 1940.

Q. I see. First, I will ask you did any committees of either the Smelters Union or the Brotherhood or American Federation of Labor,—did any of their representatives or committees ever submit to you or take up with you or request from you any payment for traveling time or any change in the face to face method?

A. No.

Q. Now, behind the Smelters Union you had what was called for a while the Employees Representation Plan, didn't you?

A. We did, yes, sir.

Q. And that became the Industrial Relations Plan?

A. Yes, sir.

Q. Did any of the committees of any of those organizations ever present any request to you of any complaint about being paid or not being paid for traveling time?

A. No.

Q. Did any individual miner, whether connected with the Union or not, during that period of time since you have been there, ever raise the question of being paid for traveling time?

A. They did not.

Q. Now, the negotiation of contracts with the Union, did you handle those or sit in on the negotiations?

A. I did not except at the last meeting they had here in town. That was the only one I ever sat at.

Mr. Harris:

When did he say that was?

Q. When was that one you sat in on?

A. The last one in 1941 with the C. I. O.

Q. When the last contract was made?

A. I wasn't with the A. F. of L.

Q. At that conference with the C. I. O. did their representatives make any suggestion of the portal to portal time?

A. The portal to portal, if I am not mistaken, was in effect.

Q. You are talking about—

A. I am talking about this one a few months ago.

Q. That is the one you meant?

A. That is the only one I had anything to do with.

Q. I thought you meant the one behind that. Mr. Carter, you made some changes in operations on May 1, 1941 at Muscoda,—you made some changes in operations?

A. Yes, sir.

Q. I wish you would tell the Court what those were?

A. We started putting the men down at six o'clock.

We started pulling them out at 1:45 instead of 3:15. We shot at 1:45. We put—Number 4, in February, we had already started a tool house in there to eliminate material on the outside, but we hadn't in 6. We put it in six on May 1st.

Q. On May 1st?

A. Yes, sir.

Q. Now, were those the only changes you made?

A. Those were the only changes we made.

Q. Since May 1st have you been working over there at Muscoda in all three of the mines,—have you been working substantially the same crews at the same places?

A. Yes, sir.

Q. Same number of crews working at the same places?

A. Yes, sir.

Q. Same method of mining?

A. Same method.

Q. And the change in method of getting men in and out of the mines was the only change as far as method is concerned?

A. Yes, sir.

Mr. Harris:

We object. He has answered that.

Mr. Burr:

No, he hasn't. I haven't asked it before.

Q. That resulted in shortening the time the men were in the mines?

A. Yes, sir.

Mr. Harris:

We object.

The Court:

Overruled.

Q. Will you tell me what has been the result on the production contracted with the last four months?

Mr. Harris:
We object to what has been the result.

Mr. Burr:
I will get it to suit you.

Q. Has there been a change in the production, or has it been about the same?

A. Number 6, the month of June against the preceding four months, there has been a loss of production of about 200 tons per shift of 400 tons per day. At Number 6 mine, about 150 tons a shift, or 300 tons a day.

Mr. Brodie:
Your Honor, it is understood I have an objection?

The Court:
Yes.

Mr. Harris:
I thought I did too, Judge.

The Court:
Yes, sir. What did you say was the difference in Number 4?

The Witness:
About 300 tons.

The Court:
And the other 400 tons?

The Witness:
Yes, sir, that is right.

Q. I don't know whether I asked you—I don't think I did. How was the time underground of your underground workers kept?

A. By the foreman—the head miner in each crew turns in a time abstract every day.

Q. Every day?

A. The foreman of each individual service crew also turns in a time abstract, and the other men, like the pumpers and pipe men and haulage crews, miscellaneous and dump men and the rest of it are handled on a sheet by the assistant mine foreman at the dispatcher's office. They are O. K.'d by the mine foreman and come across my desk.

Mr. Burr:

Will you let me see the Tennessee exhibit that shows the receipts signed by the men? I will ask one general question.

(Thereupon the clerk handed papers to Mr. Burr.)

Q. Mr. Carter, are you familiar with the method that was in force by which statements were given to the men showing the computation of time similar to Exhibits T. C. I. V and Y; are you familiar with that or not?

A. I am not. I know that is a statement, but I have nothing to do with it.

Q. You have nothing to do with handling that?

A. No, sir.

Mr. Burr:

All right. I will have to show that by somebody else. That is all for Mr. Carter.

The Court:

Mr. All?

Mr. All:
No, sir, Judge.

The Court:
All right.

Mr. Burr:
There may be something I overlooked. If there is you will let me ask it later.

Mr. All:
Yes, sir, there is one question.

The Court:
Mr. All.

(By Mr. All):
Q. Mr. Carter, the witnesses and you too have referred to these hangers being placed on the rib, and I don't know whether anybody—describe what the rib is.
A. The rib is the face of the wall between the shooting wall and the hanger wall. We call it the breast or rib. The rib is in the side.
Q. The rib is in the side?
A. Yes, sir.

Mr. All:
All right.

The Court:
All right, Mr. Harris.

Cross Examination.

(By Mr. Harris):
Q. How many men ordinarily rode down in this skip, the first skip that went down on the morning shift?

A. We rode as high as forty, but we tried to hold it around 35 to 38.

Q. That skip had no seats for the men to sit on, did it?

A. No, except those that sat on the bail on the outside.

Q. Oh, did you have men riding on the outside? How many men did you have riding on the outside?

A. Two men usually, sometimes three.

Q. Going down?

A. We have a chair on the front, as well as two or three men on the bail in front.

Q. The skip tender sat in the chair in front, didn't he?

A. Part of the time.

Q. And then these men that sat on the bail outside, were they men whose work was confined to riding up and down on the skip during the shift, or were they production men or service men, or was it left to chance as to who should get there?

A. Left to chance.

Q. Then, as to these men who were riding inside the skip, these 38 to 40 odd men, the top of the skip, you said, I believe, was in front 4 feet 3 inches?

A. Four feet 3 inches in one mine and 3 feet 7 inches in the other.

Q. The men would go down at Muscoda Number 6—forty men would be tightly packed in there, wouldn't they?

A. They would.

Q. And did those men have to crouch forward or have to ride on their knees, or could they stand erect as they rode down?

A. Stood erect and crouched, they leaned forward, as a rule.

Q. They stood erect instead of on their knees, but standing on their feet they leaned forward and crouched?

A. Yes, sir.

Q. You mean spoon fashion, one man being forward and the other man behind him bending forward spoon fashion behind him and so on throughout the entire load?

A. That is right.

Q. On July 15, 1941, in the skip at Muscoda going in a man named Payne had his head busted, didn't he, or injured?

A. Yes, sir.

Q. Now, was Payne riding on the outside with the skip tender or was he riding in the skip?

A. He was in the skip.

Q. And in going down in the skip during the last year, either in riding in or riding out, you had a man named Sam Pharr injured, didn't you,—riding in?

A. Mr. Harris, I don't know exactly the nature. We have had a dozen men injured in the skip in the last ten years, only one a lost time accident, from striking his head, and that was last Monday night. The others have been ankles, feet and hands getting in and out.

Q. Ankles, feet and hands; in other words, they jump down in the skip and turn and twist their ankles or hurt their hands?

A. Climb out and injure their ankles getting out or someone steps on a man's hand.

Q. And you have a man injured?

A. Yes, sir.

Q. And you have had men packed in so their ribs were injured?

A. Yes.

Q. During the past—not going back ten years, but during the past year, and not counting Payne, who has been hurt this week while we have been here trying the case, during the past year you have had the following head injuries, not counting those feet, hands and ribs,—you have had Sam Pharr, D. C. Lee, Jesse McElroy, and Mack Daniel?

Mr. Burr:
Not so fast; read them over again.

Mr. Harris:
Sam Pharr, D. C. Lee,—

Mr. Burr:
All right.

Mr. Harris:
—Jesse McElroy and Mack Daniel, all injured in the head in riding down in Mine Number 6?

A. I don't recall. There were none of those lost time accidents.

Q. You got a report?

A. I got a report, but I don't remember just who they were.

Q. Do they report to you non-lost time accidents?

A. Yes, we keep check—we got a copy of the report on each man. The report is set down and it is turned over to the mine inspector's office, and we follow up an injury.

Q. Whether he lost time or not?

A. But I do not keep that record myself.

Q. You do not keep the record yourself?

A. No, sir.

Q. Who keeps it?

A. The mine inspector.

Q. Now, when a man was employed by the Tennessee Coal, Iron & Railroad Company at Muscoda; he was given a brass check with a number on it?

A. Yes, sir.

Q. And the company required that he deposit that brass check at the tally house?

A. Yes, sir.

Q. Before he went down into the mine, didn't it?

A. Yes.

Q. And that requirement was in effect continually from the time they issued the brass checks down there up until the present moment, or did it stop on May 1st?

A. No, we still have the brass checks.

Q. You still have the brass checks?

A. Yes, sir.

Q. Now, then, if a miner, that is, an underground worker, knew on yesterday afternoon that he would not be able to come to work today with the morning shift, would the company require or expect him to notify him that he wouldn't be there that day?

A. We have warned them to do that, but they sometimes did—

Q. All right.

A. —and sometimes didn't.

Q. All right. Now, then, if that man notified somebody he wouldn't be there today, who would he notify?

A. We want him to notify his foreman.

Q. Notify his foreman so that when the foreman came to the mine this morning he would know that certain men wouldn't be there because they had told him between the time they had left the shift yesterday and the time he had gotten there this morning?

A. Yes.

Q. And he wouldn't have to wait until the last skip had gone down into the mine to know he needed extra men, would he?

A. Not extra men. We don't carry extra men. We simply take a man off the service crew and put him on the other crew.

Q. He wouldn't have to wait to look at that board to see he needed men in the production crews; he would have that information—

A. If he knew it he wouldn't.

Q. Because the men called him?

A. Yes, sir.

Q. Now, do you know what a hustling gang is?

A. Hustling gang?

Q. Yes, extra gang.

A. We haven't got one.

Q. Have you had, during the time you have been there at Muscoda, employees to report and stand around the tally house and wait for a chance to be substituted for a man who did not show up?

A. No, sir, not since 1933. Every man who went to the slope has worked if he wanted to.

Q. What?

A. Not since 1933, when we put in the 8-hour day. Every man that has gone to the slope, he could work at something if he wanted to.

Q. You didn't have any extra board at Muscoda?

A. Not since 1933.

Q. Not since 1933?

A. You mean by that if we didn't have a vacancy he would turn around and go home?

Q. Yes, sir, that is what I mean.

A. No, sir.

Q. In Number 6, in the ore bed, is the ground pretty level,—I mean the ore deposit pretty level, or does it undulate?

A. It undulates to a certain extent, but it is not too steep for locomotive haulage.

Q. Have you been through the other mines of the Tennessee Company, like Ishkooda?

A. It has been some years, yes, but I have been through all of them.

Q. And Wenonah; you have been through all the mines they have?

A. Not since they started hauling by locomotive haulage in Ishkooda and Wenonah.

Q. Would you mind talking a little louder?

A. Not since they started installing locomotive haulage at the other two divisions. In other words, it has been some several years since I went through them.

The Court:

That is at Wenonah and Ishkooda?

The Witness:

That is at Wenonah and Ishkooda.

Q. These auxiliary hoists you have used at Muscoda Number 6, is that where you have a hoist stationed permanently, and instead of using electric locomotives, you have a cable pull them?

A. No; it is on fairly flat ground. To use an illustration; it is on comparatively flat ground, and it handles the cars from the loading track to the side track from whence they are moved by motor.

Q. How many of those auxiliary hoists have you used at Muscoda?

A. Fifteen,—one for each crew.

Q. One for each crew?

A. That doesn't hold always, but it has been the situation now for some several months.

Q. How far is that hoist from the working face or where the crew is drilling?

A. That depends on the topography of the ground. If the ground is sloping away from your working place it is close to the mechanical loader. If it is pitching the other way,—you see that is to let the cars down to the side track. If it is pitching the other way it would be located on the other side.

Q. In some of your headings the miners are working up a slope or up a grade?

A. Yes, sir.

Q. And in other headings they are working down a grade?

A. Yes, sir.

Q. Now, how many of those fans do you have you spoke about?

A. There is a fan for each heading.

Q. That is all fifteen headings?

A. Of course, we don't run them all the time, but it depends on the location,—depends on the location of the break through for air as to whether they would be run or not.

Q. In Number 6 you have a system of brattices and various devices to send the air around to the different places you want it?

A. We brattice off these stopes after they break through. As we advance it to the next one, we set the fan up behind it with that flexible tube to blow the air into the face of the working place.

Q. Then how do you get it out of the mine itself?

A. It is served by an auxiliary fan on the surface. The whole mine is ventilated by an auxiliary fan on the surface.

Q. Do they pump the air out of the main slope?

A. It is pumped out through an air course, which was originally a manway. We went in and turned it into an air course by doing a lot of stone brattice work in there.

Q. Do you have an air course in Number 4?

A. Yes, sir. We have just gotten a fan installed in there and are still completing some of the brattice work.

Q. Last fall—

A. We started it last year. We have been doing that work since. The fan is in operation, but all the brattices are not completed.

Q. Before last fall what was the ventilation system in Number 4?

A. We operated on the same fan, serving 6 and 4, and it took care of both. Now, by putting a fan in old Number 2 manway we have separated the two.

Q. Is Number 2 between 4 and 6?

A. No, Number 2 is south of Number 4.

Q. Now, I know you answered this, but I didn't make a note of it, and if the Court will pardon the repetition on two or three little items, I just want to get it clear in my own mind.

What did you say a hanger weighed?

A. About 10 or 11 pounds.

Q. And a wedge?

A. A little, less than half a pound.

Q. And a C-hook?

A. 18 pounds.

Q. And a skidder block?

A. 120.

Q. You said something about—I thought you said to Mr. Burr a drill weighed about 96 pounds, but that is wrong, isn't it? A complete drill with tripod and all arrangements weighs nearly 200 pounds?

A. No, the drill itself will weigh 186, and the tripod will weigh 212.

Q. And the whole mechanism—.

A. 186 plus 212, which puts you right at 400 pounds.

Q. When the hanger is driven in this hole it is wedged in by a wedge or two on the side, isn't it?

A. Yes, sir.

Q. Now, how do you get them out? When you have finished with that hanger and you want to move it, how do you get the hanger and wedges out of that hole?

A. It is tapered, the butt larger than the neck near the eye. You stick your wedges in there and tighten up with your hammer, and when you get through you hit the thing and loosten it and pull the wedges out and take it out.

Q. Is the wear and tear on those wedges pretty heavy? What is the life of a wedge?

A. It is very short. It is not from being worn out, but being lost.

Q. About how many days?

A. The average crew uses 25 to 50 or 75 a month.

Q. What is the life of a hanger?

A. Hangers go about, maybe, ten or twelve a month.

Q. A C-hook?

A. One or two a month.

Q. Now, that place where you started issuing the hangers, wedges and C-hooks in 1938 was a distance of 2300 feet from the mouth of the mine, wasn't it?

A. Yes, sir.

Q. And the miners had to carry in their hands or on their shoulders these wedges, hangers and C-hooks that distance to the mouth of the mine?

A. They did.

Q. They were not furnished with any truck or hand car or anything of that sort, push car, or anything else to get them up there?

A. No.

Q. Where was your blacksmith shop where you repaired hangers and C-hooks at Muscoda Number 6?

A. It is about 200 feet from the wash house.

Q. And the wash house is about 200 feet from the—

A. I said 200 feet. I mean 200 yards. The wash house is about 200 yards from Number 5 slope.

Q. Was the blacksmith shop closer to the mouth of the mine or further away?

A. Further away.

Q. So they had to walk a greater distance from the blacksmith shop to the mouth of the mine?

A. Yes, sir.

Q. Now, the men brought out hangers and wedges and C-hooks for repairs, didn't they?

A. No, sir.

Q. They never did do that?

A. Never did.

Q. They brought out drills for repairs, didn't they—

A. Yes,—jackhammer steel.

Q. Jackhammer steel?

A. Yes, sir.

Q. Now, down in that particular mine were the production crews the only people underground who used carbide?

A. No. All of them use carbide practically.

Q. Service men, timber men, track men, line men, electricians, all use carbide lights?

A. Yes.

Q. That was absolutely necessary in order for them to be able to see to work, wasn't it?

A. Unless they happened to be under electric lights. They should have them because they might get out of the zone of the electric lights.

Q. But where they happened to be under electric lights would be a very small part of the operations underground?

A. A small number of men, but in a large amount of our operations because all our haulage is lit up from end to end.

Q. But the operating part,—the production part, that would be very small?

A. Yes, sir.

Q. Now, you said when the head miner put in his requisition that you turned it over to the accounting department for cost distribution?

A. No, sir. You mean—

Q. A requisition for C-hooks, hangers, wedges—

A. No, no. They went simply to the carbide house where that man issued them. I checked it to start with to see whether we were making money or not. If we

were not, we would change it again, but we were. The accounting department had nothing to do with it.

Q. Now, you had that brass check system on the board?

A. Yes.

Q. Did the record of those brass checks go to the accounting department to make distribution of pay?

A. I don't want to get too deep into the accounting department, because I might slip, but as far as I can tell you, the board was checked up there—the time keeper checked that board to get a distribution on the places which those crews went in as showing the man was there and what he was assigned to. That had to tie up with that head miner or service foreman's time abstract which had been checked by the mine foreman and which he had turned in the time for that crew.

Q. That is the foremen underground?

A. Yes, sir, the individual foreman of each crew, each production crew, or head timber man or head track man.

Q. That timber man or track man would get his time abstract up early in the day?

A. Yes, sir.

Q. He didn't wait until the end of the shift to make his time abstract?

A. No, he carried it out with him and kept it out with him.

Q. And when you were keeping these time abstracts, the rule was to show eight hours? They got credit for eight hours?

A. Unless a man had gone out from injury or sickness during a shift it showed eight hours.

Q. If a man was there seven and a half hours his time abstract showed eight hours?

A. Unless he was sent away.

Q. Suppose he was there nine hours, what would it show?

A. That would come on a supplemental sheet. You see that crew would leave after eight hours. That extra time would come in on a supplemental sheet, and the man would be paid time and a half for that extra hour.

Q. You mean the production men would be paid for that extra hour?

A. Any man that worked overtime would be paid for that overtime.

Q. When did that start? What year did that start?

A. 1936,—let me see,—1936, I believe.

Q. You mentioned that the C-hooks—

A. It might have started before that. I will not be positive.

Q. You mentioned the fact the C-hook was getting heavier all the time?

A. We have had three different types of C-hooks. This last one, I imagine, which we have had in use about a year, is about 30 percent heavier than the previous one.

Q. Does that mean you are putting a greater and greater strain on the C-hooks?

A. The same strain is on there. We are trying to make them last longer.

Q. It doesn't mean your drag scraper is different from what it was before?

A. The same drag scraper,—the same mechanical loader. We are trying to make that material heavier to last longer.

Q. These mechanical loaders were in the mine when you went there?

A. Yes, sir.

Q. You were not there at any time when they had the old shaker system?

A. Yes, sir, I was, but that was back in—I don't believe I worked there under the shaker system,—yes, I did, in 1917. They still had them. Number 4 had them. They were shifting over. Number 6 had them too. Yes, sir, I worked with them.

Q. During the time you have been there as superintendent,—that was a promotion over your job as engineer?

A. Yes, sir.

Q. You are under Mr. Ball, aren't you?

A. Yes, sir.

Q. And all the contract negotiations for pay were handled by Mr. Ball?

A. Handled by Mr. Ball, yes, sir.

Q. That is not a part of your work and your duties?

A. No, sir.

Q. And never has been?

A. And never has been, no.

Q. Now, there is one mechanical detail about that checking in at the tally house that nobody has cleared up. When a man hands the check in does he tell the man at the tally house number so and so going to such and such a place?

A. No.

Q. Well, how does the man in the tally house know where to put a check when he picks it up?

A. A new man—most of those men are old men; they know whose crew he belongs to. The foreman hangs it on the board. He has assigned that man to that crew previously.

Q. The man that puts it on the board has already assigned that man to a crew?

A. The mine foreman, who generally puts it on the board, has assigned that man previously to a crew. Lots of those crews have been intact for years.

Q. The vast majority of them have been there two or three months so they need no instructions as to where they were going to work and the tally man needed no instructions as to where to put the brass checks?

A. I don't suppose he did.

Mr. Harris:

May I have my exhibits for identification, please.

(Thereupon the clerk handed certain papers to Mr. Harris.)

Q. I have a rule book dated March, 1937, and another one dated January, 1926. Are there any rule books in between those years?

A. I don't believe there are. I am not positive. I don't think so.

Q. Now then, I have a Plan of Industrial Relations in the Ishkooda Division. That one you wouldn't know anything about that?

Mr. Burr:
It was the same in each division.

A. It is the same in each division.

Q. It is?

A. Yes, sir.

Mr. Burr:
The same thing in each division.

Q. Now, then, this is dated February 2, 1934. Were there any others published by the company besides that?

A. They changed the plan—E. R. P.—I have forgotten which was first, the Employees Representation Plan or Industrial Relations,—E. R. P. preceded that.

Q. On that is E. R. P.

A. No, that is the Employees Incentive Plan.

Q. There was another book that deals with the E. R. P. published by the company?

A. Yes, sir.

Q. This one dated January 1, 1939, Ore Mine Incentive Plan, was published by the company?

A. Yes, sir.

Q. Wasn't there an earlier publication about the ore mines incentive plan published before 1939?

A. Yes, sir.

Q. What was the date of the earlier one?

A. I will say sometime about—we went on it around—it was before the strike in 1936. It may have been published afterwards. I believe it was published before the strike, published sometime in April, 1936.

Mr. Burr:

Is that the incentive plan you are asking about?

Mr. Harris:

Yes, that was the incentive plan I was asking about.

Mr. Burr:

For your information, I think the first print of the incentive plan was on a mimeograph form.

The Witness:

There was a book issued for the men.

Mr. Burr:

Probably mimeograph.

The Witness:

The foremen got a different type,—a larger book.

Q. I thought my question covered it, but evidently it didn't. Is that the latest rule book, the 1937 rule book?

A. I think the 1937 is the latest rule book. It may be wrong, but I think it is right.

Mr. Harris:

I think that is all.

Mr. Smith:

I would like to ask some questions.

The Court:
Yes, sir.

(By Mr. Smith):
Q. This mine you have been talking about and describing, that is the biggest producing mine on the mountain?
A. Yes, sir, it is.

Mr. Smith:
That is all, sir.

The Court:
What is the condition of the railroad tracks in there, this passage way where the men walk?

The Witness:
We keep them clean.

The Court:
Clean?

The Witness:
Periodically put men on there and clean them up.

The Court:
Are they smooth?

The Witness:
Smooth,—standard gauge track kept in good condition.

The Court:
No soggy, wet, slippery places?

The Witness:
No.

The Court:
All right.

(By Mr. Smith):

Q. Mr. Carter, there are two mines there; that is called a division?

A. It would be four like at Wenonah, but with us the Muscoda Division is 4, 6 and Number 5 limestone mine.

Q. That is the one you are the superintendent of?

A. Yes, sir.

Q. And that is the largest producing division on the mountain?

A. Yes, sir.

Mr. Harris:
I forgot to ask, if you are through, Judge,—

Mr. Smith:
Yes, sir.

Mr. Harris:
I forgot to ask how far under the ground,—I don't mean horizontally, your operations are vertically.

The Witness:
Our operations in Number 4 are under about 1500 feet of cover; most of our operations are under about 13 to 14 hundred feet of cover.

Mr. Harris:
That is 4?

The Witness:
In the face where six of our crews over ten over there operate, the cover is from thirteen to fourteen hundred feet.

Mr. Harris:
It may be you brought this out; that was the distances to the different headings in Number 4. Did you go into that with him?

Mr. Burr:
No, but I will by Goodwin.

Mr. Harris:
By Goodwin?

Mr. Burr:
Yes, sir.

Mr. Harris:
Then I will not ask him about that.

Mr. Burr:
I will go with him in Number 4 like I did with Mr. Carter in Number 6. I am giving you the distances to every point.

Q. In Number 6, the greatest distance from the portal to the furtherest heading is at which heading?
A. Sixth left northeast.

Mr. Burr:
I gave you all that.

Mr. Harris:
I thought you did.

Mr. Lipscomb:
You mean from the manloading station?

The Witness:

That is the loading station at this time. It is 6050 feet.

Q. Is that from the man unloading station?

A. That is from the man unloading station, where the men walk.

Q. How far is the man unloading station from the top?

A. About 5800 feet.

Mr. Lipscomb:

That is what we want.

Mr. Burr:

It is on the map.

Mr. Harris:

It is all right if it is on the map. I believe that is all.

Mr. Burr:

Judge, I have a few questions, but if I can read over my notes, I am sure it will not be over five minutes. I think I can save time by doing it during the adjournment.

The Court:

Do it after lunch?

Mr. Burr:

Yes, sir. I promise to take not over five or ten minutes. I can usually shorten the time by reading my notes, and I will read them over during the lunch period.

The Court:

All right. Court is adjourned until 1:30.

(Whereupon, at 12:10 P. M., July 17, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess.

1:45 P. M.

The Court:

Do you want Mr. Carter back?

Mr. Burr:

No, sir. I have checked my notes and I don't think there is anything else.

I will take Mr. Wilson Goodwin next.

1691 WILSON B. GOODWIN, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Goodwin, how old are you, please, sir?

A. 47.

Q. And what is your present occupation or business?

A. Mine foreman, Tennessee Company, Muscoda, Mine Number 4.

The Court:

What is it?

The Witness:

Mine foreman, Tennessee Company, Muscoda, Number 4 mine.

Q. When did you first begin your mining experience? Start back at the beginning and run through it hurriedly.

A. The first time I ever worked in the mines was back in 1907 when I was about 14 years old, after school.

Q. What mines did you work in then?

A. The old Alfretta Mine owned by the Republic people out beyond East Lake.

Q. Was that an underground mine?

A. Underground mine. There was one pit mine there, but I never worked in the pit mine.

Q. How long did you work there?

A. About three months.

Q. When did you go back to working in the mines?

A. I worked there in 1908 again after the school was out.

Q. Then where did you work?

A. In 1909 I worked at Ruffner Number 3, owned by the Sloss people.

Q. How long did you work there?

A. About six months.

Q. Did you work underground?

A. They were sinking the slope, grading out.

Q. You never worked underground?

A. No, sir.

Q. What kind of work did you do when you worked for the Republic Company during vacation?

A. Driving a mule.

Q. In the headings?

A. In the headings.

Q. Underground?

A. Yes, sir.

Q. After you left Ruffner, where did you go next to work?

A. Went to Raimund.

Q. That is the Republic Steel Company?

A. Republic Iron & Steel Company.

Q. How long did you work there?

A. I worked there until 1913. I went to work there in 1910.

Q. When did you leave there?

A. I left there and went to work at Muscoda on the 10th day of January, 1913.

Q. What sort of work did you do at Raimund when you went there?

A. When I first went there I drove a mule a short period of time.

Q. What else did you do?

A. I pumped a while and came out on the outside and ran a hoist until I went to Muscoda.

Q. Have you been at Muscoda since then?

A. Yes, sir, with the exception of about six weeks when they transferred me to Wenonah.

Q. You have been at Muscoda since then except—

A. About the six weeks I was at Wenonah.

Q. What mine were you in there?

A. Number 7, Wenonah.

Q. I wish you would tell what jobs you have held at Muscoda since you went there in 1913.

A. I have done practically everything from driving a mule up to the job I am now holding, head miner, section foreman, track foreman, worked on various and several different jobs.

Q. You said you were a section foreman?

A. Yes, sir; I was.

Q. Section foreman was changed to head miner with the incentive?

A. The section foreman, started, I believe, at Muscoda in 1916.

Q. When did the head miner come on to take the place of the section foreman?

A. The head miner came on in 1913 when they inaugurated the incentive plan.

Q. How long have you been a mine foreman over there, Wilson?

A. I was mine foreman in 1923 from February until in April, 1924, when they shut down old Number 2 mine.

I came back to Number 4 from there and went on as head miner, head blaster, or assistant mine foreman, whatever you call it. Head blaster was what the occupation carried.

Q. You mentioned some occupations you had. You said you had most all of them. You drove a mule, did you?

A. Yes, sir.

Q. And then I thought you said—I don't know whether you mentioned rapping.

A. I used to rap at Number 4. I went to work at that in—

Q. What is rapping?

A. Commonly called the skip tender.

Q. What is a car knocker?

A. Back in the old days when they used two ton cars, there was a man that kept those cars up and replaced them with new trucks or any repairs they needed.

Q. What is a slate picker?

A. That was back when they run these old shakers. There was a man that attended to these old shakers and kept the slate picked out as it came across the pan in the car.

Q. When was it they used those old shakers?

A. That was 1914 and 1915.

Q. And you served in those jobs?

A. Yes, sir.

Q. You said you had served as driller and drill helper. As driller and drill helper, did you do the work Mr. Carter has described here with reference to drilling the holes and setting them off?

A. Yes, sir.

Q. Did you also do any work during this period of time with what we call the production part of the crew?

A. I have.

Q. What have you done with that part of the crew?

A. I have done everything from loading ore with a shovel up until the present system of mining.

Q. That was before the days of mechanical loaders?

A. Yes, sir.

Q. Do you know when the mechanical loaders came in?

A. They commenced putting them in in Number 4 in 1924. They had some few prior to that. They began changing them in 4 in 1924.

Q. Have you ever, during this period of time, had any service on what we call the service crews?

A. Yes, sir, chute building and timbering.

Q. Have you ever served as foreman of that crew?

A. Yes, sir.

Q. What crews?

A. I have served as foreman of track crews, a timber crew, square timber crew, carpenter's crew, we call them.

Q. And you have been assistant mine foreman?

A. I went on as assistant mine foreman in 1927.

Q. Has all your work been at Number 4, or did you work any in Number 6?

A. I worked at Number 6 a while back in 1918, and I didn't work at Number 6 any more except a few days in 1937, I believe it was, Mr. Burr. Number 4 was down and I worked there three or four shifts. I don't recall—they removed me to Number 5—

Q. Did you open that mine?

A. No, sir. They were driving that new air course and I came there to open up that and stayed there—I don't know how long.

Q. Most of your work had been at Number 4?

A. Yes, sir.

Q. And you have stayed there how long continually?

A. Since the first of January, 1938.

Q. Have you ever been Assistant mine foreman in Number 4?

A. I went on as assistant mine foreman there in 1937.

Q. I wish you would look over here at this map and see if you can help me find—Have you seen this map, Mr. Goodwin, or not?

A. Yes, sir.

Q. This is Number 4 mine here?

A. Number 4 there.

Q. Here is the entrance down here?

A. Yes, sir.

Q. Can you recall about how far the slope was when you first went to Work in Number 4?

A. The slope was at 86.

Q. Was at 86?

A. Yes, sir.

Mr. Burr:

Where is Carter? Come here and measure for me.

Q. Where was the head of the slope,—where was it, to what point, say, in May, 1941?

A. Well, the number of those headings go down to a hundred and nineteen and twenty, I believe it was, and then they fixed to put in that pocket system down there, and then they went under the ore and there wasn't any more ore headings with the exception that all ore that came out of a hundred and nineteen and twenty there went to the pocket, and that was the last.

Mr. Burr:

All right; measure that.

Mr. Carter:

2500 feet to the surface.

Mr. Burr:

How far is it down to the pocket?

Mr. Carter:
5850.

Mr. Burr:
5850?

The Witness:
2500 to the surface.

Q. Since you have been there you have seen the slope driven from 86 down to the pocket?

A. Yes, sir.

Q. The working places in that Number 4 mine, going into the mine, are they to the right or left?

A. Well, the most of our working places now is to the right of the slope. We have some working places that is directly, you might say—if the slope was driven on it would go right to it—

Q. Kind of in front of it?

A. Yes, sir, right straight in front of it.

Q. This—

A. That is right there (indicating on map).

Q. Which is the furtherest working place from the slope May 1, 1941?

A. Ninth right Number 2, would be the furtherest working place.

Q. Show me where Ninth right Number 2 is.

Mr. Carter:
Here it is.

Q. That is 4550 feet from the pocket; is that about right, you think?

A. About right.

Q. I see. Now, here is one here that is—third left southwest that is 4600 feet, according to the map. Is that about right according to your judgment?

A. That is about where they have to walk to get there.

Q. That is what I mean, the usual walkway.

A. Yes, sir.

Q. The next heading you have in that mine is third left southwest. What about the—

A. The same distance, because they come up the haulage and turn off and have to turn back to the working place.

Q. This is 4,550 feet according to the map?

A. There isn't very much difference.

Q. What is the heading being operated over here to the left of that?

A. Third left and fourth left too.

Q. One is 2730 and the other 2600 feet; is that about right?

A. Yes, sir.

Q. Any of these up here operating?

A. That main south haulage is operating up there.

Q. That is 3850 feet. There seems to be one up here. What is this?

A. That is not working.

Q. That is not working?

A. No, sir.

Q. Was that working prior to May 1st?

A. No, sir. That hasn't worked since sometime last year.

Q. It was working last year?

A. Yes, sir, we worked that.

Q. The next one over here to the left is—that is Number 6. All right. Back on the right—further on the right hand side appears one. What heading is this?

A. Seventh right.

Q. That is 4000 feet; eighth right, 3150.

A. There is a fault between that.

Q. What is this?

A. 112.

Q. That is marked 3150 feet. Is that about the right distance?

A. That is the right distance.

Q. And below that is 89, 2950 feet.

A. Yes, sir.

Q. And another one.

A. Yes, sir.

Q. 3450 feet?

A. Yes, sir.

Q. Is that all your working places?

A. Working ten places.

Q. Ten places?

A. Yes, sir.

Q. How many crews did you work normally, underground stoping crews did you work normally in Number 4?

A. We worked ten producing crews.

Q. Do you remember about how many composed that ten?

A. Well, now, there is—there are two or three of these places, Mr. Burr, that is on what we call development work. They are just driving main haulages and they don't use but a six man crew. The rest of them use seven, some eight.

Q. How many men at Number 4 work normally underground?

A. About a hundred and eighty, and then there is about 22 or 24 that work on the slope track crew, hauling down crew, material shift. They work between shifts.

Q. You heard Mr. Carter describe that this morning, these men that work between shifts?

A. That has been the system ever since we have been operating double shifts.

Q. What is the proportion between the service crews and the underground crews in that mine, about the proportion?

A. The crews?

Q. Yes. Are there more on the producing crews or on the service crews?

A. You take the service men—

Q. That is what I mean.

A. —such as your trip riders and motor runners and company men—

Q. That is what I want.

A. —our company men will run a little higher than the producing crews.

Q. I see. I believe you are the first one that I have run across that had worked back as far as the shaker system. What was that? I am sort of interested in finding out about that antiquated system.

A. When I went to work there back in 1913 these headings were turned off closer. You can see by the map they were turned off closer. The company tried to widen out these headings and get as much percentage of this ore out as they could with as little driving as possible. They installed what they called a shaker system. It consisted of an iron beam about 15 inches wide, and about 7 feet long. You coupled those beams together. You had a water pipe and it had a lever, and that lever coupled to the beams. It shook the ore down the slope over these beams into the cars.

Q. When did that system begin to play out?

A. It played out—along about 1919 or '20 it had practically played out. They used some of it in Number 3 in 1924 but not at Number 2.

Q. Since you put the mechanical loaders in there, I believe you said in 1924, has the system been the same or not?

A. There have been some changed.

Q. I mean the general system.

A. The general system has been about practically the same.

Q. How many entrances have you to Number 4 mine?

A. From the outside?

Q. Yes.

A. There is only one entrance coming down the slope, and then we have a pipe way that goes to 61, and then the manway is on either side. There is an old manway coming to the back of the mine, but after the mule days, when they quit using the mules, that was abandoned and not in use.

Q. How long have you been having one entrance and exit from the mine for hauling ore on the main haulage?

A. Never had but one.

Q. Never had but one?

A. That is on the main slope.

Q. You had only one?

A. That is all we had.

Q. Do the men who work in that mine come into that mine on the main haulage way?

A. Yes, sir.

Q. Is all the ore hauled out of that haulage way or not?

A. Yes, sir.

Q. All the material and supplies hauled down on it?

A. Between shifts.

Q. Between shifts?

A. Yes, sir.

Q. Have you got a pocket at that mine?

A Yes, sir.

Q. Just what is that pocket and how does it work there?

A. Well, that pocket will hold between a railroad and a half—scarcely two railroad cars, and the slope is driven under the pocket, and your cars are dumped into the pocket, and the skip runs under the pocket where we have measuring gate, that fill the skip, and the ore is hauled out to the top. The ore is dumped by means of a rotary dump.

Q. Does all the ore go through that pocket?

A. No, sir. We have some places up here on the hill—that ore comes out and is dumped directly on the skip.

Q. At 112 and those three places there the ore is brought to the main slope and dumped directly on the skip?

A. Dumped directly on the skip.

Q. And the other ore—

A. Dumped into the skip through the pocket.

Q. Brought from the working places?

A. Yes, sir.

Q. And goes through the rotary dump—

A. And into the skip.

Q. —and into the skip there?

A. Yes, sir.

Q. How is that ore—that ore is produced right at the stope, isn't it, the face of the stope?

A. The face of the stope and heading together.

Q. And the heading?

A. Yes, sir.

Q. Of course, when you are driving a heading the production is in the face of the heading?

A. In the heading.

Q. The headings extend at right angles from the slope and the stopes are driven along at right angles from the headings, I suppose?

A. Yes, sir.

Q. When and how does the transportation crew handling the ore get hold of the ore for transportation after it is shot down?

A. Well, the producing crew loads the ore into the cars. We keep our sidetrack—that is where the motor could come after cars,—we keep our sidetrack as close to the working place as possible. I would say we move our sidetracks up about every 200 feet. The motor comes in there and he set in his empty cars. He pulls five or

six cars at a trip. He takes a load of empties in there and picks up the loads and carries them out.

Then one of the muckers—he pulls anywhere from one car to the whole trip. He will hook it to the hoist rope and pull it up to the place where he is loading, and when he gets them loaded he drops it or pulls it, whatever the condition of the ground is, down to where the motor can get it, and he calls the dispatcher and he has the motor pick it up on the side track.

Q. Is it or not part of the duty of the producing crews to load the cars and bring them down to where the motor can get them?

A. Yes, sir.

Q. About how far do those cars have to be brought?

A. It varies on the condition of the ground.

Q. About what would be the average?

A. I would say the furtherest distance from your shooting face to the side track wouldn't be over 200 feet.

Q. After it is carried down, of course, it is put on the skip and it is hauled out by the main slope haulage?

A. Yes, sir.

Q. Do you use the same skip in hauling the men like you do—

A. We do—well, the skip is never taken off unless it is to be repaired. We have a larry we hitch on the back when we are hauling material.

Q. Do you use that when you are hauling the men?

A. No, sir.

Q. Do you haul any ore or material when you are hauling the men?

A. No, sir.

Q. That haulage slope and the haulage way that goes out to the headings, how is that haulage way with reference to—Well, I will ask you first,—there have been some questions about ventilation. Is that main slope on an intake or not?

A. We are on an intake.

Q. On what?

A. On an intake.

Q. What does that mean, that the air is better or worse there?

A. The air comes down—

Q. That means it is where the air is fresh?

A. Yes, sir.

Q. If the air gets stagnant at all, where does it get stagnant, in the main haulage ways or the haulage ways away from the main haulage ways, or in the places where you work?

A. It would be more inclined to get stagnant in the places where we work if it gets stagnant anywhere, than on your main haulage way.

Q. Has the ventilation in that mine been all right?

A. Yes, sir, at the present time it is.

Q. Especially on the haulage ways; that is all I am interested in.

A. On the haulage ways.

Q. That is the only place I am interested in, in the haulage ways.

A. Yes, sir.

Q. Now, I want to ask you about the condition of the places where the men work in that mine. Do they walk, in going to their work, upgrade or downgrade on hills and levels or is it changeable? How is it?

A. Well, it is kind of what you might say, betwixt and between. There are some places you would be going downgrade, I would say, 5 to 6 or 8 percent, and some places it would be going upgrade some.

Q. Now, is that—the way the men walk up to the stopes, do they walk along the same track ways or headings where the tracks are laid or not?

A. Walk the haulage ways.

Q. Walk the haulage ways?

A. Yes, sir.

Q. How are those haulage ways? Are they kept smooth and clean or they rough? Just describe them to the Court.

A. We take a service crew and a trip runner and motor and train of cars and go over it and scrap it at least once a week.

The Court:

Do what?

The Witness:

Scrap it; go over it and clean off all the material that has fallen off the cars. We do that once a week.

Q. Is that haulage way rough or smooth or betwixt and between; is it like walking out in a field?

A. I wouldn't think there would be any trouble. I have been walking it a good long time. The track is level. There isn't holes between the tops of the ties.

Q. How long have you been walking that haulage way?

A. I have been walking it at Muscoda about 28 years.

Q. What part of that main slope way—is there any part of it,—I don't know whether I am getting the right word or not,—steel timbered?

A. Yes, sir, a few places.

Q. How is the rest of it?

A. It is concreted down between five and six hundred feet, I think,—I wouldn't be positive—somewhere in that neighborhood, something like 500 feet.

Q. That is concrete?

A. Yes, sir.

Q. From there on down—

A. From there on down we have it timbered with square timbers standing up from the foot wall to the roof. In some few cases we have steel sets across there.

Q. Now, Wilson, I want you to take yourself and anyone in like occupation, say a section helper on one of these crews, or a mucker or drill helper, going down into that mine. Where does he go to first before he goes to work?

A. Well, the first thing he does, he comes to the bath house and changes—

Q. Is that bath house the same way Mr. Carter described this morning?

A. Well, the bath house is like he said. It has been changed, I think, two or three different times since I have been there.

Q. I see. Since you have been there has there always been a bath house or not?

A. Yes, sir.

Q. Has that bath house been always about the same vicinity as it is now?

A. The same place.

Q. The same place?

A. Yes, sir.

Q. It has just been remodeled and enlarged during that time?

A. Yes, sir.

Q. During that time has the company made any charge or not to the miners for use of the bath house?

A. They did when I went there for three or four year —I wouldn't say just how long, but a charge after I went there.

Q. They made a charge then?

A. Yes, sir.

Q. How much?

A. Fifty cents a month.

Q. Fifty cents a month?

A. Yes, sir.

Q. And since that time there hasn't been any charge?

A. Hasn't been any charge. I think they cut it out probably in 1926. I wouldn't say positively.

Q. All right. After the miner has changed his clothes where does he go if he goes anywhere?

A. He goes to the carbide house and gets his carbide if he needs it.

Q. This carbide comes in one-pound cans?

A. Yes, sir.

Q. How often during a week does he get his carbide?

A. It depends. Some will use more than others. I would say on an average a can will last a man two days.

Q. Does he take the carbide with him?

A. Yes, sir.

Q. When he comes to the tally house after he has gotten his carbide, what, if anything, does he do?

A. Well, when he comes to the tally house—after he gets to the tally house he lays his brass, his check—his brass, we call it, up in the window.

Q. Do you handle it there if it is on your shift?

A. Yes, sir.

Q. What do you do with those checks?

A. I generally let them pile up there until they all practically get in and then I go and hang them up on the board at the places where the men work.

Q. Are you familiar with where they are working?

A. I have 180 men, and they can pile all their numbers in the pile and I can hang them up where they work.

Q. Hang them up in how long?

A. Take about ten minutes to pick them up and hang them up where they work.

Q. When night comes, what do they do?

A. When evening comes and they come out, they take up their checks and keep them until the next shift.

Q. Does an occasion occur when the men come out there are some checks that are left?

A. Yes, sir, I have had that happen.

Q. What do you do then?

A. Go back inside and find out where they are at, or what the trouble is.

Q If a man comes out on account of sickness or accident or any other reason before his shift is over,—before the shift is over, how is that handled so far as the check is concerned?

A Well, if he comes out before the shift is over with he checks his number out when he comes out.

Q. How do you supply vacancies in crews, Wilson, at your mine?

A. Well, it—

Q. If a vacancy occurs, if you have more than one way of doing it, tell the Court all of them.

A. The way we handle ours, we let the men bring their numbers up and lay them down in the check window—

Q. Yes, sir.

A. —and then they catch whatever skip they want to, whichever one comes most convenient, and they go inside.

After we hang the check numbers on the board,—each man's heading, is numbered, and a place for the head miner, the drill runner, the drill helper, motor runner and section helpers,—a nail for each of them. Then when we see a man is missing, we pull a man off the service crew and send him to that place.

Q. How do you call them?

A. Call over the telephone and tell the assistant mine foreman to tell that man to go to a certain place.

Q. Does that enable—

A. Enables him to get to his working place by work time.

Q. By work time?

A. I might say there where we have men off for two or three days the man I have put in his place will ask

me, "Do you want me to go to the same place?" or stope, and I will tell him I did.

Q. At your mine, do you sometimes get notice in advance from a head miner he would have a vacancy in his crew?

A. We do have that in some cases.

Q. How would you fill that?

A. On pay days and Sunday nights we run very short. You have to be particularly careful until you get your board checked in because you are going to fill the vacancy with a man that can do the work.

Q. You have got to handle your personnel in accordance with the kind of work they do?

A. You have got to keep in line with the work they are capable of doing, yes, sir.

Q. You make it a habit not to fill your vacancies until you have your entire board under consideration?

Mr. Harris:

We object to him leading.

Q. Is that the way you handle it or not?

A. I generally wait until I get all the board checked in.

Q. Different ones handle it in different ways, of course?

A. Yes, sir.

Q. What time in your mine over there previous to May 1, 1941,—at what time and how is the juice let on?

A. Inside?

Q. Yes, inside.

A. It is turned on by an automatic switch timed by a clock.

Q. What time is it turned on? Take the morning shift, for instance, what time is it turned on?

A. 6:30.

Q. 6:30 in your mine?

A. That is at the bottom, this generator, in this 112 place. A man had to walk from the bottom of the slope back up about 1200 feet, I will say, to where that generator is and start it.

Q. What time would that generator be started?

A. It would be after the second drag went on.

Q. What time, Mr. Goodwin, did the first car start down with the men in the morning at your place?

A. Around six o'clock.

Q. Did you have to run a test run there?

A. No, sir.

Q. Why not?

A. We had what we called the split shift doing the hauling between shifts, and it would be always right around the time to send them in when they got out.

Q. When they got out?

A. Yes, sir.

Q. There would be a continuous running of the skip there?

A. Yes, sir.

Q. The men started in at that time, and at about what intervals did they continue to go down?

A. I would say it takes a skip around about nine minutes—nine or ten minutes to make a round trip.

Q. And about how many skips did you have to have at your place?

A. Four to five, generally about five skips.

Q. How many men did you generally carry on a skip at your place?

A. We generally carried around 35 to 38. We have carried as high as 40. We can put 37 in the skip and three on the bail.

Q. At what time during this period of time you have been talking about—at what time did the pay computation of the underground miners start?

A. 6:45.

Q. 6:45?

A. Yes, sir.

Q. Now, did you ever—I will ask you this question first: Did the men all get to their places of work by 6:45 or not?

A. No, sir, they did not.

Q. Did you make, in your mine, sometime back,—make a check and keep a record that you turned over to Mr. Carter—who did you turn it over to?

A. I sent it to the superintendent's office?

Q. To the superintendent's office?

A. Yes, sir.

Q. Did you make a check and keep a record, with the assistance of anyone else, and if so, I will ask who in a minute, showing the time that these men actually got to the places of work and actually began working in your mine?

A. I did.

Q. When was that check made, if you recall?

A. I think it was back in December. I wouldn't be positive. Somewhere back there.

Q. And about how long a period did it cover?

A. I would say possibly two or three weeks.

Q. How did you do it, Mr. Goodwin?

A. By going down or sending one of the assistants. I made one or two trips myself and the assistants made trips. We would ride the first skip and as quick as we would get off the skip we would go to the working places.

Q. And take the time of the men?

A. When each individual got to his place.

Q. Do you remember who were your assistant mine foremen that assisted you in making that—

A. Mr. Parsons and Mr. Luke Wesson.

Q. Was Mr. Hallman one of those?

A. Mr. Hallman at that time was on Mr. Jones' shift.

Q. The same mine?

A. Yes, sir.

Q. Did you name Mr. Parsons' name as being on yours?

A. Yes, sir, Mr. Parsons was on my shift.

Q. Now, these records were made and turned into the superintendent's office, I believe.

A. Yes, sir.

Q. Do you recall, independent of the records, as to what that check showed, the ones you checked, as to what time—about what time the men actually got to the working places and started to work?

A. Well, it showed men at work from around 6:30 to 7:05. There were producing crews and some of the service crews that ran up as high as, I will say, 7:15. I wouldn't be positive.

Q. Did you also check the leaving time in the afternoon?

A. I did.

Q. What time—before we get to leaving time, what time was the juice shut off in the afternoon by this automatic clock?

A. Well, it was set to kick off at 3:10, but lots of times we would get through with our pulling before then, and we would shut it off about three o'clock.

Q. Did you, on this check you made, keep the time of the leaving of the men from these places of work?

A. We did.

Q. Without reference to the record, at that time the leaving time was about what time?

A. Well, it varied with the service crews. We had more trouble keeping the service crews away from the hoodlum, we call it, than the producing crews.

Q. What did your check show as to the range of time these service men left their working places?

A. I would say anywhere from twenty minutes to three to three o'clock. Some of them might have stayed up until three o'clock.

Q. What time did the producing crews—

A. They left at different intervals kind of smiliar to the service crews. They would all leave by three o'clock.

Q. All leave by three o'clock?

A. Yes, sir.

Q. Some leave before three or not?

A. Well, there were some, yes, sir, left before three.

Q. Now, is that check you made of that period of time—I will ask you to state whether or not from your knowledge of what had occurred there during the years previous, was that about what, in your judgment, it had been all the time as to the time the men get through and leave the working place?

A. Well, sir, I didn't realize until I did check on it that they wasn't getting to the place as soon as they was.

Q. In other words, you have no way of checking back behind that?

A. Have no way of checking.

Q. What, if anything, happened among these employees when they found out you all were making this check? Did they slow up their going or speed it up or what?

Mr. Harris:

We object to that, if the Court please.

The Court:

Overruled.

A. Well, they did show some signs of getting there earlier and staying there later.

Q. Staying there later?

A. Yes, sir.

Q. Now, I am going to show you here the—what I have marked for identification at this time—

The Clerk:

T. C. I. 23.

Mr. Burr:
Just mark it on this one page.

The Clerk:
Just this one page?

Mr. Burr:
Yes, sir. I will introduce the whole thing, probably later, if I can find the ones that put it together. I am going to use this one as an illustration at the present time.

(Thereupon a sheet headed "#4 Mine, Heading: 3-L #2; Shift: Day; Date: December 14, 1940," was marked T. C. I. Exhibit No. 23.)

Q. I am showing you, Mr. Goodwin, what has been marked T. C. I. Exhibit Number 23, which is a typewritten sheet, apparently with the notation at the bottom, "Timed by Wilson Goodwin, Mine Foreman."

A. That is true. That crew is still in that place.

Q. Whose crew is that?

A. Jim Simmons.

Q. In making this, did you put down the names of the individuals?

A. Yes, sir. That is the closest place we have to the loading station.

Q. You put down the name of each individual?

A. Yes, sir.

Q. And his badge number?

A. Yes, sir.

Q. And the time of arrival and the time he left?

A. Yes, sir.

Q. For instance, Jim Simmons arrived there at 6:15 and left at 3:12?

A. Yes, sir.

Q. Well, Rich Moss arrived at 7:00 and left at 3:12?

A. Yes, sir.

Q. And so on with the rest of them?

A. Yes, sir.

Q. With respect to how the men were paid, irrespective of what time they got there and when they left, how were they paid?

A. Paid for eight hours work.

Q. What time were they supposed to start?

A. At 6:45.

Q. And supposed to end at what time?

A. 3:15.

Q. At what time?

A. 3:15; 30 minutes lunch period.

Q. If a man got there a few minutes before 6:45 and went to work a few minutes before, that is the way his pay was sent in?

A. Eight hours.

Q. And if he got there after that time, what did he get?

A. Eight hours.

Q. If he left before it was out, what did he get?

A. It is according to how long he left before hand.

Q. I mean if he—

A. In case of sickness or something he had to go out for—

Q. I am talking about how you worked them there.

A. If he stayed in the mine all day he got eight hours.

Q. Now, you have been a head miner, a section foreman, an assistant mine foreman and mine foreman. With your total experience, what would you say would be the average time of the underground employees,—first, the productive crews at their productive work?

Mr. Harris:

We object to that if the Court please.

The Court:

Overruled.

A. I would say taking the whole and averaging every man, it wouldn't run over seven and a half hours.

Q. How about your service crews?

A. The service crews wouldn't run—between six and a half and seven hours.

Q. Now, one question has been suggested to me. The schedule of trips you testified about, I will ask you to state whether or not the last trip got down to the underground loading station in ample time for the men to get to their working places at work time.

Mr. Harris:

We object to that.

A. No, sir.

Q. Which one didn't do that?

A. The last trip.

Q. What time did that last trip get down?

A. It generally got down from 6:40 to 6:50, and it depended on how the men got down.

Q. The ones that rode that trip, it wasn't possible for them to get to their working places by 6:45?

A. No.

Q. But the time began at 6:45 irrespective of that?

A. Yes, sir.

Q. What crews at your place are usually first in just by habit and custom there?

A. Well, up until 1941—

Q. That is what I am talking about, all my questions are prior to May 1, 1941.

A. Just any crew that got the skip.

Q. I see.

A. Sometimes it might be the timber crew, haulage crew, head miners, just whoever got there first.

Q. Going out was the same thing too?

A. The same thing, unless a man was sick or had something he wanted to get out specially to see about.

Q. In coming out of the mine, with respect to when the men left their work and got down to the hoodlum, how did they decide who would first ride the skip out, or did anybody decide that?

A. There were benches in the loading station where they could sit down and take them in rotation.

Q. When this underground miner got down in the morning, talking about not the exception but the usual man, where did he go from the hoodlum, and how did he go?

A. He would start on to whichever place or haulage he was working in, and probably there would be one or two or his crew or somebody in the crew next to him with him.

Q. And walk with him to his working place?

A. Yes, sir.

Q. When they got up there, the crew would get up to the working place, what work would they begin doing? Take first the drilling part of the crew, what did they begin doing?

A. Well, when the drill crew got there the first thing they did they would generally get their quarry bars and they would start to make the place safe to proceed with their drilling.

Q. And what did the loading part of the crew do?

A. The loading crew would get up there and one of them would go to quarrying the face and get it ready for drilling his hanger holes, and the other would go to installing his hose and getting ready to drill the hanger hose.

The drag operator, with the assistance of the engineer,—he would move his motor to whatever place he was going to drag, and fasten his motor down.

Q. Did that work continue until the day's work was over?

A. Well, it continued until they got through with the work.

Q. Got through with the work?

A. Yes, sir.

Q. Did you have any lunch time down in that mine?

A. What was your question?

Q. Did you have any lunch time or not?

A. Yes, sir; thirty minutes.

Q. How was the signal given for that?

A. Well, we used to allow them the privilege to take it at any time they wanted. Some of them would want to eat at different intervals during the run of the shift.

Q. And after that did it come on at a regular time?

A. Yes, sir.

Q. What time was that?

A. Well, I would say the average rule is the lunch period would run from ten o'clock on up until 11:00.

Q. Was any signal given in your mine for the taking of the lunch period by blinking the lights, anything like that?

A. We used to do that, but we quit it about a year ago.

Q. How much time was given out for the lunch period?

A. Thirty minutes.

Q. Was that part of the day's eight hours work or not?

A. No, sir.

Q. Has it ever been a part of the day's eight hours work down in your mine?

A. No, sir.

Q. In the afternoon who are the last men out of your stopes there?

A. The drill men, drill helper, head miner.

Q. And the others, do they or not usually leave before the shooting occurs?

A. The others may leave—they may leave and start walking on down eight or ten or fifteen minutes prior to the shooting.

Q. What is the shooting time at your place?

A. Prior to May 1st we shot at any time after three o'clock.

Q. Was there any other work to be done by the loading part of the producing crews after they left the stopes so far as producing ore was concerned?

A. No, sir, unless they just wanted to, within themselves, help the drill man. They could tamp his holes.

Q. They could stay back and help him?

A. Yes, sir.

Q. And after the drill men got the holes loaded and tamped and the fuse set and shot, was that the end of their work?

A. Yes, sir.

Q. Now, have there been any changes there, Mr. Goodwin,—first, I will ask you if you would tell the Court,—give me a list of the permanent supplies, we have been calling them, the heavy stuff that stays in the headings all the time?

A. You have the mechanical loader, the auxiliary hoist, auxiliary fan, the drills, the hose pipe, jackhammer, skidder block.

Q. How about the drill steel?

A. It don't stay there all the time.

Q. All right, sir. Anything else you recall now? Did you give the air and water hose? I believe you did.

A. I mentioned the hose pipe. I didn't fool with the difference between air and water.

Q. How about the jackhammer?

A. It stays there the same as the big drill.

Q. Auxiliary hoist, auxiliary fan, mechanical loader, drag scraper, the drills, air and water hose, jackhammer, —that covers it as far as you can recall?

A. Yes, sir.

Q. How is that stuff I have just asked about, confining my questions to that for the present,—how does that get in the mine, and after it gets in the mine how does it get to the particular stopes?

A. It is brought down by the material hauling down crew. They bring it from the surface.

Q. How does it get to the mouth of the mine?

A. It comes from the shops or warehouse by truck by the service crews.

Q. Is there any requisitions given for it?

A. I write the requisitions, me or one of my assistants.

Q. How do you figure out—how do you decide how much to requisition?

A. Well, I do that by keeping up with what I have on hand.

Q. You know how much is needed for each place?

A. I know the average run it probably takes to operate through the week or through the day.

Q. All right, sir. That is brought from the blacksmith shop or supply house or warehouse to the mouth of the mine?

A. Yes, sir.

Q. It is unloaded there?

A. It is unloaded on the yard and the material crew load it there from the yard and it is taken inside.

Q. Who picks it up there?

A. The service crew unloads it and takes it to the various places.

Q. Is there any of that particular material carried by the producing crews?

A. Yes, sir, it may be sometimes, but then it is carried by that producing crew it is timed as service crews.

Q. They are paid as service crews at that time?

A. Yes, sir.

Q. And timed as service crews?

A. Yes, sir.

Q. I mean when they are working as producing crews, do they handle that material?

A. No, sir.

Q. If it gets out of repair or has to be replaced, how is that handled?

A. If a drag scraper has to come out sometime during the shift, the motor runner will pull that over into an empty car and tram it down to the side track, and the motor hauler picks it up and carries it to the material way. It is loaded by the material crew and picked up and carried to the outside by the haulage crew and taken outside where it is repaired.

Q. How does it get back?

A. The same way.

Q. Aside from that, I wish you would give the Court a list of the standard material in one of these producing places other than what we have referred to as the material that stays there all the time.

A. Well, we have jackhammer steel. We have to swap them out. We use the hangers and wedges and E-hooks.

Q. Is the E-hook the same as the C-hook?

A. Some of them call them C-hooks.

Q. As a matter of fact, what I have seen are the shape of an E. You call them an E-hook?

A. C-hook or E-hook, whatever you call them.

Q. We will call them C-hooks because that is what everybody has been calling them.

Have the weight of those been changed since you have been using them?

A. Yes, sir, those E-hooks have been changed two or three times.

Q. Are they smaller or heavier?

A. They are heavier.

Q. You heard Mr. Carter this morning describe the C-hooks and wedges and hangers, and without going over it, is that description accurate—

A. It is.

Q. —as you recall it?

A. It is.

Q. Now, Mr. Goodwin, back when you first went out there at Muscoda, first began working there, even before you were mine foreman or assistant mine foreman, back when you were working at these various occupations, what was the method at that time of getting these articles you have just mentioned, the hangers and wedges and C-hooks into the mine?

A. Well, when we first began using the mechanical loaders—

Q. Yes, sir.

A. —the mine foreman would write a requisition for them each morning before he went down.

Q. Yes.

A. Then sometime before the morning shift went down when the office boy came by picking up mail or anything that needed to go to the supply house or office he would take that requisition and turn it in to the shop and they would fill that requisition and send it back to the mine by the truck, the surface crew, and they would unload it there. When the hauling down crew came on in the evening they would load it up and haul it down in the mine.

Q. How did it get back to the working places?

A. When I was stoping, if I got there in the evening, I would get what was there and carry it back in. That was the system we had then.

Q. Did all of them do that when you were stoping?

A. Yes, sir, while it lasted.

Q. Did you take all you needed or what you thought you might need in the future?

Mr. Harris:
I don't think we need to go into that.

The Court:
No, I don't think we need to go into that.

Mr. Burr:
All right.

Q. Did you go on that way for quite a while or not?
A. It went on—
Q. Until when?
A. —the last part of 1937 or first part of 1938.
Q. Was that before or after the incentive plan?
A. That was after the incentive plan.
Q. Did this practice you have just described of the men getting there first, taking what they wanted and taking it with them,—did that increase or diminish or what after the incentive plan went into effect?
A. Well, prior to the incentive plan we wasn't as bad as we were after the incentive plan went on, because, after the incentive plan we didn't want anything to hurt our work or slow it down.
Q. The more you worked the more you got paid?
A. The more we worked the more we got paid.
Q. Did that habit increase of grabbing that stuff and taking it on?
A. I would say it did.
Q. Did it increase with you; you were a head miner at that time?
A. I would say it did.
Q. Was a change made after that?
A. Yes, sir.
Q. With reference to that stuff?
A. Yes, sir.
Q. Just tell what that change was.

A. Along about the last part of '37 or first part of 1938, we had a lot of trouble keeping things like wedges, hangers and C-hooks to work with, and through the request of some of the head miners—

Q. Some of them mentioned it to you?

A. Yes, sir, some of them mentioned we have a regular place established where they could get this material when they needed it, and I took it up with Mr. Carter about establishing a place where they could get this material on either the night shift or day shift when they needed it.

Q. Did any of the head miners take it up with Mr. Carter? Were they present when you took it up?

A. No, sir.

Q. Did any of the other mine foremen take it up?

A. I think Mr. Stone was present when we discussed it.

Q. After that was it issued on requisition?

A. Yes, sir. I usually wrote the requisitions underground.

Q. Did they come to you to get the requisitions for what they needed or did you go hunt them?

A. Lots of times they would come to me, and sometimes the head miner would come, a head miner or drill man or drag man or first one or the other.

Q. Those requisitions covering those three articles, about how many would a requisition cover? What was the usual—what was the usual number specified? What was that usual number?

A. We generally wrote a requisition for around four hangers and twenty-five wedges; sometimes we would give them six hangers and thirty wedges. I have wrote them for as high as forty wedges.

Q. What was the usual number?

A. Four hangers and twenty-five wedges.

Q. About how often would a particular crew get that requisition?

A. Well, two or three times—

Q. A what?

A. —a month.

Q. A month?

A. Yes, sir.

Q. Where did they take that requisition to be filled and where did they get that material?

A. They would get that requisition on, usually—like you give that requisition to them this morning, they would carry it out and leave it in their muckers—

Q. Where?

A. In their muckers, their work clothes, and the next morning they would go out to the carbide boy and he would fill the requisition.

Q. That is where you kept these particular supplies?

A. Yes, sir.

Q. When that particular requisition would be filled, how would they carry these particular supplies to the working place?

A. Sometimes another member of the crew would be along and help carry them. I have seen a man bring two hangers along in his hand, and they would lay them on the slope.

Then, whenever we began to run drags in, we had a steel bucket between 2½ and 3 feet long, and about a foot or 15 inches wide, and about a foot deep, and we hung that on the bail of the skip, and then we would load that small stuff or he would load it in there and carry it to the loading station, and when he would get there he would take it out of the basket.

Q. Ordinarily about how many men out of a crew would handle that stuff from the carbide house to the place where they put it in the skip?

A. I couldn't say positively.

Q. What would be your—

A. I have noticed two men out of the same crew, and I have seen men where you could give requisitions

to them maybe get some fellow that worked next to him that would come along—

Q. And help him carry it?

A. —and he would take one or two in his hands and bring them along.

Q. I see. And has there been a time there, Mr. Goodwin,—I will put it this way: State whether or not there has ever been a time when a head miner can't send—either phone—over the phone or send his men down and get any supplies he wanted at any time delivered to him at his working place?

A. We do that in lots of cases.

Q. You always do that when they request it?

A. Yes, sir.

Q. Always have?

A. Yes, sir.

Q. Now, at Number 4, I don't believe I have asked you the dimensions of the skip you use for carrying the men down into the man loading station. Can you give me those dimensions? The inside dimensions are what I am after, not the overall dimensions from the track.

A. Around 15 feet long, I imagine off hand, and around four and a half feet wide and better than four and a half feet deep.

Q. When you were head miner, and also while you were mine foreman, how did the head miners keep the time of the men in the mine?

A. Well, he was furnished with a distribution sheet and the occupation was on that sheet, and he put his name and check number down, and put down the names and check numbers of his men. Then, on the producing crews, we would put down the amount of explosives, dynamite we used, the number of caps, the feet of fuse, and the number of trams we loaded. Then over on the other side of that sheet if we had any delays which throwed us off, on account of moving slate or the motor haulage not pulling us, we would make that up. That went in with the service time.

When I was timbering, we didn't use that kind of sheet. They had a different form which carried what they called the company rate sheet, company man sheet. They were all classed as underground timber men, carpenters, and so on, and the rates were classed as underground helpers rates.

Q. Without going into much of those details, did or not each section foreman or foreman of each crew keep a daily time sheet of his crew?

A. Yes, sir; made it out some time during the shift and turned it in at the end of the shift.

Q. Turned it in at the end of the shift?

A. Yes, sir.

Q. And each man was given the eight hours—

A. If he stayed inside the mine.

Q. —if he stayed inside the mine?

A. Yes, sir.

Q. What happened if he worked over eight hours?

A. He was paid for it.

Q. On what basis, straight basis or overtime basis?

A. Paid him time and a half.

Q. Did you have a special form for that you used?

A. Yes, sir. We had a special form we made out, and the mine foreman O. K.'d it.

Q. When these head miners and foremen made out these abstracts, were they turned in by them directly to the office or turned over to the mine foreman?

A. Mine foreman.

Q. Did you check them as mine foreman?

A. Yes, sir, the assistant or I, one approved each sheet.

Q. And from there that went into the office?

A. Yes, sir.

Q. Now, Mr. Goodwin, I want to ask you this: I want to ask you, up until May 1, 1941,—I will ask you to state whether or not at any time prior to that time within

your knowledge and all your experience you had in the ore mines out there, was—were the men ever—was their pay ever computed or paid on any other plan other than the working place to working place plan?

A. Never has been.

Q. Did they ever receive any pay during that period of time for the time spent in going to and from the working places?

A. Not that I ever heard of.

Q. Did you ever hear of anything of that sort—

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We except.

The Court:

As a matter of fact, Mr. Burr, I have been letting you go into things that are immaterial on this accounting.

Mr. Burr:

Your Honor will recall I took the position when this was gone into with Mr. Ball on cross examination I thought very little of this was material but Your Honor wanted to get the picture.

The Court:

I don't care about so much of it.

Mr. Burr:

I think I am about through. I will keep the rest of it positive.

Q. You heard Mr. Carter testify this morning. Were the same changes testified to by him made at your mine on May 1, 1941?

Mr. Harris:
Judge, that calls for his recollection.

Mr. Burr:
I was trying to save time.

Mr. Harris:
He can ask what changes were made.

The Court:
You can ask him what changes were made.

Mr. Burr:
I would prefer to do it that way.

Q. Just tell us what changes were made at your mine.
A. The men started going in on portal to portal, paid from the time they checked in until they checked out.
Q. What time do they check in?
A. Six o'clock.
Q. What time do they come out?
A. We run our first drag around a quarter of two.
Q. What time is everybody out of the mine?
A. About 2:25 to 2:27.

Mr. Burr:
I believe that is all, Your Honor.

The Court:
I want to ask you a question. What is the height of the roof in the slope going down?

The Witness:
In the slope?

The Court:
Where they ride down.

The Witness:
It varies.

The Court:
It varies?

The Witness:
Yes, sir. There are some places—we have one place that runs—five or six hundred feet, it is, I imagine, around 15 or 18 feet.

The Court:
High?

The Witness:
Yes, sir.

The Court:
Above the track?

The Witness:
Yes, sir, above the track. Then, after we pass under that it runs around 8 foot; 8½ is the closest place—

The Court:
Well, do you have any places where the men on the trip going in or coming out, that they have to stoop or duck?

The Witness:
Yes, sir, there is one or two places.

The Court:
What is the height there at those places?

The Witness:
I would say around—somewhere in the neighborhood of eight feet.

The Court:
Eight feet?

The Witness:
Yes, sir.

The Court:
How high above the top of the cars, the seats—I believe you seat them?

The Witness:
No, sir.

The Court:
You don't have any seats?

The Witness:
No, sir, we haven't got seats.

The Court:
How high above the floor is the roof?

The Witness:
Well, above the floor, I would say it is five and a half to six feet. I wouldn't be positive, because I haven't measured it.

The Court:
We will take a recess of about eight minutes.

(Whereupon proceedings were in recess from 2:50 P. M. to 3:00 P. M., at which time proceedings were resumed as follows:)

Mr. Harris:
Shall I proceed, Your Honor.

The Court:
Proceed, yes, sir.

Cross Examination.

(By Mr. Harris):

Q. Mr. Goodwin, the Judge asked you about the height of that roof above the floor of the mine in the main slope. Now, regardless of how high it is in feet and inches, the men going down in the skip, after they travel that first five hundred feet, have to bend over in a crouching position?

A. They ride in a crouched position.

Q. And they have to ride in a crouching position from the time they traverse that 500 feet that has been concreted until they get to the man unloadng station, don't they?

A. No, sir.

Q. Mr. Goodwin, do you lower that skip with a cable?

A. We do.

Q. And how big a cable is it?

A. I think it is an inch and seven-eighths. I wouldn't be positive.

Q. Steel, a steel cable?

A. Yes, sir.

Q. Now, that cable as it goes—as the skip goes down in the mine, you have to have rollers from time to time for that cable to run on, don't you?

A. Yes, sir.

Q. And you have those rollers up in the roof of the main slope?

A. No, sir, not in the roof.

Q. They are up over it?

A. Up over it.

Q. Up over the skip?

A. Yes, sir.

Q. And that rope passes over those rollers?

A. Yes, sir.

Q. And those rollers that are hanging down in the roof of that mine probably are 18 inches in diameter?

A. I couldn't say. I haven't measured them.

Q. Illustrate with your hands how large they are.

A. I would say off hand about 18 inches.

Q. And the skip runs under them?

A. Yes.

Q. And the cable runs over them?

A. Runs over them.

Q. And how many of those different rollers hanging down over the path that the skip followers in taking those men down in the mine are there in Mine Number 4?

A. I would say there are seven or eight. I don't know.

Q. Seven or eight?

A. Yes, sir.

Q. Those rollers are made of steel, aren't they? If a man's head—they are not made of wood or any light material? They are made of metal?

A. They are.

Q. And those rollers have been there ever since you have been out there?

A. Yes, sir.

Q. You said you had 180 men underground and 20 on top. Do you mean in your day shift or night shift?

A. I mean on the night shift.

Q. Do you act as foreman on a day shift all the time?

A. No, sir. I swap week about.

Q. You swap week about?

A. Yes, sir.

Q. So, in addition to there being 200 in the mine there are 400 on both shifts?

A. Yes, sir.

Q. You say the men turn in a brass check when they start in and take it out when they come out?

A. Yes, sir.

Q. And if they lose one they have to buy another one?

A. No, sir.

Q. You give them that?

A. Yes, sir.

Mr. Burr:

Judge, I don't see what we are trying here.

Mr. Harris:

I have been confused myself at times.

Mr. Burr:

I don't see why anyone wants to ask that question when there is not a jury around here.

The Court:

That is over now.

Mr. Burr:

All right, sir.

Q. How much would you say is the distance between the top of the skip and the closest part of those rollers as the skip went under them?

A. Six inches or better.

Q. What?

A. Six inches or better.

Q. And the skip is four feet three inches high to four feet seven inches?

A. Four feet seven inches.

Q. What?

A. Four feet seven inches.

Q. Four feet seven inches; is that right?

A. Right.

Q. Now, the men—on your day shift when you get there at the mouth of the mine—you are there before the skip starts down, aren't you?

A. Yes, sir.

Q. Who decides when a skip is full so that it can go down and who gives the order for it to go down, you?

A. If I am there, I do. If I am not, one of the assistant mine foremen is always out there.

Q. The skip tender doesn't do that, does he?

A. No, sir.

Q. But either the mine foreman himself or an assistant mine foreman is there, and whatever order they scramble on the skip in, the mine foreman tells the skip tender to pull out and they pull out, or if it is an assistant mine foreman he tells him and he pulls out; that is right, isn't it?

A. Yes, sir.

Q. And those men in that skip are packed in and bent over just like you had spoons racked up together, aren't they?

A. Well, not necessarily.

Q. Well, are they; not necessarily, but usually and generally?

A. Sometimes; it is according to how many is in the skip.

Q. You carried 37 in the skip and three on the outside?

A. 35 to 37.

Q. And three on the outside?

A. And three on the outside.

Q. 37 men in the skip fixed it so they are crouched and bent over like a row of spoons stacked in there?

A. They are stacked in there.

Q. Bent over like spoons, in spoon fashion?

A. They are in a crouched position all right.

Q. You say for the last year you have given no lunch light signal; that is right, isn't it?

A. Yes, sir.

Q. That means that there is no fixed time either by lights or otherwise to notify the men to stop and eat their lunch, doesn't it?

A. The foremen were all told to take their lunch period any time from ten to eleven, whichever suits the crew.

Q. Whichever suits the crew?

A. Whichever suits the crew, yes, sir.

Q. Now, then, before this last year you gave a signal for them to stop for lunch?

A. We used to, yes, sir.

Q. How long was it that you gave a signal for them to stop for lunch?

A. I don't know how long it lasted.

Q. What years was it you had that signal?

A. 1938 I believe, and '39 we used it some.

Q. 1938 and '9. Now, I understood you to say that they blasted up until you went on the portal to portal plan,—that they blasted at any time after three o'clock?

A. From 3:00 to 3:15,—3:10.

Q. Now, did you give any signal for them to blast?

A. No, sir.

Q. Did not. Do you give any signal now for them to blast?

A. Nothing more than shutting the generator down.

Q. And before you did not shut the generator down?

A. Not until the motors all got in around three o'clock.

Q. Not until all the motors all got in?

Mr. Burr:

Talk a little louder.

A. I said not until the motors all got in,—the traveling motors.

Q. You have ten headings in that mine?

A. Yes, sir.

Q. How many electric motors have you got in that mine?

A. We only have two in the bottom, and one at Number 112, and then we have a little six ton motor in what we call ups.

Q. That is four electric motors?

A. Yes, sir.

Q. Is there room in the mine for any more electric motors?

A. That is not for me to say.

Q. Do those electric locomotives occupy all the track, or could you have more?

A. You could have 25 in there.

Q. You could have an electric locomotive for each heading, couldn't you?

A. I guess we could.

Q. The track that comes up to one heading, up to two or three hundred feet, does it split and serve another heading and another stope? You spoke on your direct examination of men walking together after they picked up their stuff, that they would walk up towards the working stopes or faces together. Does that mean that the distance of crew Number 1 from crew Number 2, if they were the closest together, would be only a couple of hundred feet?

A. Approximately 200 feet to where they would turn off to leave the haulage.

Q. Does the ore that comes from the stope that crew number 1 is working in, is that loaded on the same identical track as the ore from the stope crew number 2 is working in?

A. No, sir.

Q. How long would those two tracks be before they ever came together, or would they ever come together until they got to the haulage way?

A. They never come together until they got to the haulage.

Q. That would be about 1200 feet?

A. It depends on how many headings you are working off that haulage.

Q. How many haulages have you?

A. We have a haulage at 112; we have the southeast haulage and southwest haulage and number 10 haulage and number 2 haulage.

Q. That gives you five haulages?

A. Yes, sir.

Q. And you have ten headings in that mine?

A. We have about 25 headings in there. We are only working ten though.

Q. You are not operating that mine at full capacity?

A. Can't operate it—not the amount of headings we could put on if we could handle the material.

Q. You have got 25 stopes and headings and mine ten of them only?

A. Mine 10.

Q. How many were you mining in 1940?

A. Ten.

Q. How many in 1939?

A. Ten.

Q. 1938?

A. Ten.

Q. 1937?

A. We started up in 1937 and only started about three or four, I think it was, when we started.

Q. Now, you were assistant mine foreman in 1937?

A. Yes, sir.

Q. At this particular mine?

A. Yes, sir.

Q. You started up with three or four, and you have gotten up as high as ten; is that right?

A. That is right.

Q. And that is the highest you have ever gotten from that period on?

A. That is the most we have ever operated.

The Court:

Those other stopes, are they worked out?

The Witness:

No, sir; it is new development work.

Q. Now, when you went down in the mine checking the time it took the men to go from the manloading station to the different faces, did you hide so the men didn't know you were checking them, or—

A. No, sir; I didn't have any right to hide.

Q. Did you walk right along with the men?

A. On several occasions me or the assistant would pass some of the men.

Q. I didn't hear you.

A. I said on several occasions me or the assistant would pass some of the men.

Q. Did you start with them from the man unloading station and keep right with them until you got to the face?

A. No, sir. When we got off the unloading station, any men that got off, we would probably pass them and go on ahead of them.

Q. Who were you timing, the men who were walking, yourself?

A. We were timing those behind us.

Q. Were you timing those ahead of you or behind you?

Mr. Burr:

He was not timing the walking time. He was timing when they got to the working place.

Mr. Harris:

I thought he had some tables of the walking time.

Mr. Burr:

No, sir.

Q. You haven't timed the men, how long it took them to walk to the working places?

A. No, sir.

Q. You haven't taken part in any survey where any men, without any weights in their hands, would walk from the man loading station to the face?

A. I haven't, no, sir.

Q. You haven't seen it done?

A. No, sir.

Q. I misunderstood the kind of thing you were talking about.

A. Yes, sir.

Q. Practically all the mine in Number 4 is either uphill or downhill, isn't it?

A. I couldn't say it is. It is just like I say; it varies up and down.

Q. A man at the face is either mining on an upgrade, or he is mining on a downgrade; there is very little of it where he would be mining on the level, is there?

A. Probably two or three places.

Q. Two or three places out of ten?

A. Yes, sir.

Q. Now, these electric locomotives that pull the cars around, how fast are they geared to go, do you know?

A. I couldn't say.

Q. Well, what power have they, do you know, the gauge power those locomotives have?

A. No, I wouldn't testify.

Q. Do they travel as fast as a man walks or faster?

A. They travel faster than a man walks, a right smart.

Q. Is their power such they could start off with a jerk, or do they have to start very slowly when they are pulling these cars loaded with ore?

A. They start slow.

Q. But they spill the ore all along, and once a week you have to go down and pick up this scrap?

A. We pick it up once a week.

Q. But between the time you pick it up each week that scrap has fallen where the men walking in and out have to step over it?

A. Not particularly, if they walk in the middle of the track.

Q. In other words, if they will pick out the very middle of the track?

A. They have standard tracks, four feet six inches between the rails. The ore falls over to the outside. Sometimes they will find a little rock lying between the rails.

Q. Do you have any places where water leaks in the mine in Number 4?

A. Not at the present time. We have had one or two little places where it leaks in.

Q. You told Mr. Burr at the present time the ventilation was all right. When was it when it wasn't all right?

A. Our ventilation was none too good back three or four months ago. I don't remember when it was.

Q. What did you do three or four months ago to improve the ventilation?

A. A year ago we went to old Number 2 and bratticed off those places,—bratticed off every one of those places and set a big fan out on the air way.

Q. Since you did that the conditions have improved?
A. Yes, sir.
Q. And your ventilation has improved since then?
A. Yes, sir.
Q. Before that that was a mine that was hot down in there?
A. There were some hot places, yes.
Q. If you put your hand up against the wall or ore, did it feel hot to you, or was it just the air in the mine that felt hot to you?
A. It was the air.
Q. It was the air that felt hot to you?
A. Yes, sir.
Q. Did you ever check up to see what the temperature of that air was?
A. No, sir, I didn't.
Q. Was that air dry air or was it moist air?
A. Well, it was dry.
Q. Hot, dry air?
A. Yes, sir.
Q. Now, when Mr. Burr asked you about a lot of work that the men did when they first got to the face. In other words, you mentioned they had to get a quarry bar and sound out the roof; the muckers could make their arrangements; the drill men could move their tripods. They could do all that before any juice came on?
A. They could have, but the juice always went on at 6:30.
Q. Always went on at 6:30?
A. Yes, sir.
Q. And, as a matter of fact, in 1938 and 1939, the juice, or rather the skips would start running around 5:30, wouldn't they?
A. I do not recall.
Q. You don't recall?
A. No, sir.

Q. Were you with them when the mechanical loaders were put in?

A. Yes, sir.

Q. Now, what changes in the methods of mining took place when mechanical loaders went in?

A. Well, they changed the method of the underground stoping system practically all together.

Q. What was that change?

A. Well, they changed in—back then they drove the ground different to what they do now.

Q. How, Mr. Goodwin?

A. Back when it was hand loading, it was driven—a heading was driven and then they would drive a small upset up the hill and that was loaded through a shaker system into the cars onto the track below.

Q. And—

A. After they put in mechanical loaders they done away with all that.

Q. All right. What other changes took place when they put in mechanical loaders?

A. Well, when they put in mechanical loaders they began to do away with the mules underground and began to install these traveling motors.

Q. Electric locomotives?

A. Yes, sir.

Q. Have they always used tram-cars of the same size?

A. No, sir. When they used to—when they installed those mechanical loaders they used a five-ton car. At Number 2 we did use some two-ton cars with mechanical loaders, and after Number 4 shut down in 1934, I believe it was,—during the period it was down up until 1937 when they started Number 4, they taken those cars and transferred them to Number 6, and when they started up again they installed them with six-ton cars.

Q. How many tram cars of ore will the skip hold?

A. About 2½, I imagine.

Q. About 2½?
A. About 15 tons.

The Court:
How much will the motor engine pull?

The Witness:
You mean the hoist?

The Court:
No, on those tracks where the men have to walk?

The Witness:
We have pulled as high as sixty tons, but we don't do that in all cases. Thirty tons is considered a load.

The only time we pull 50 to 60 tons, we are pulling a trip in and setting it on the yard out of the way, and when the other motor comes in, we will get that trip and set it on the dump. We have such a small pocket we have cars that they can't take care of, and lots of times they come in and can't get on the dump and they set the cars on the track and go back.

Mr. Harris:
I think that is all.

Mr. Burr:
Have you gentlemen got anything you want to ask him?

Mr. Smith:
No, sir.

Re-Direct Examination.

(By Mr. Burr):
Q. Mr. Goodwin, there are a few questions I want to ask you.

Mr. Harris asked you with reference to the change in ventilation you say has been made there recently.

When I was examining you I don't know whether I understood you or not. I think I did, but I want to ask you again.

Has the ventilation in that mine at any time been bad on the main slope or haulage ways or not?

A. No, sir, not on the main haulage ways.

Q. The only place you have had any trouble is at the actual working places?

A. Yes, sir.

Q. And did any—was that ventilation—was that where you used the auxiliary fans?

A. We used those auxiliary fans—

Q. In places of that sort?

A. In places where the air is not up sufficiently to take care of it.

Q. I want to get down and get some facts about this spoon crouching business Mr. Harris has asked you about on the slope.

First, how is that slope lighted if it is lighted?

A. Electric lights.

Q. Well, how well is it lighted? Is it—

A. Well, it is lit up where a man can walk down without any light,—without a carbide light.

Q. Would you say the electric lights are as strong as those in here, or give as much light by way of comparison? I just want to find out.

A. 220 watts.

Q. 220 watts and how close are they spaced?

A. I will say about 100 feet or 150 or 200 feet. I wouldn't be positive.

Q. Is there any difficulty about anybody on the skip not seeing the roof or seeing those big rollers that are there?

A. They can see them.

Q. You don't have to have your carbide lit on your main slope to see those?

A. No, sir.

Q. How many head accidents have happened in that mine since you have been there going down that slope in that spoonlike, crouched position that Mr. Harris refers to?

A. Never has but one happened since I have been there, and that happened in 1914.

Q. In 1914?

A. That is on my particular shift now.

Q. That is what I am talking about.

A. Yes, sir.

Q. You had one man got his head bumped in 1914?

A. Yes, sir.

Q. And there haven't been any bumped on your shift since then?

Mr. Harris:

He has asked that once.

Mr. Burr:

Well, you have talked about these rollers in such funereal tones—

The Court:

Go ahead and ask about it.

Q. Is that the only one you know of, Mr. Goodwin?

A. That is the only one I know of.

Q. He has asked questions generally as to safety conditions down there, Mr. Wilson?

A. What is your question?

Q. I say you have been asked about people getting hurt on the track going to their places of work and riding down on the skip and getting their heads bumped.

Could you tell the Court how many consecutive days you went on your shift in that mine without any accident of any kind, on the slope or headings or anywhere else?

A. We went approximately 14 months.

Q. Approximately 14 months without a lost time accident?

A. Yes, sir.

Q. Are you familiar with the awards that are made by the Department of Mines,—the United States Department of Mines under the fund created known as the Joseph Holmes Award Plan?

A. Yes, sir.

Q. How many times have those mines out there won that award in the last ten years to your knowledge?

A. Well, Number 5 has won it four times, I believe it was, maybe five.

Q. That was the first in the United States, and how many times have you won an award?

A. In 1934, Number 4 mine won a Joseph A. Holmes award, and I got a personal award for going the longest time without a lost time accident.

Q. In the United States?

A. Yes, sir.

Q. Talking about accidents, are you familiar with the lowness of roofs or other conditions in coal mines, or do you know anything about coal mines?

Mr. Lipscomb:

We object to that.

A. No, sir.

Mr. Burr:

I will save that for later.

Q. How about the speed of that skip going down; do you know about that?

A. I couldn't say about that.

Q. You did say how long it takes?

A. Yes, sir.

Q. How long does it take?

A. Takes around 9 or 10 minutes to make a round trip.

Q. To make a round trip?

A. Yes, sir.

Q. Up and down?

A. Yes, sir.

Mr. Burr:

I believe that is all I want to ask him.

Mr. Harris:

You—

Mr. Burr:

Wait a minute. Mr. All said something to me just now and I couldn't listen to him.

That is all.

Re-Cross Examination.

(By Mr. Harris):

Q. You referred to lost time accidents. How much time does a man have to lose to have a lost time accident?

A. He has got to lose enough time to where he is compensated.

Q. You mean under the Alabama Compensation Law?

A. Compensation Law, yes, sir.

Q. Well, for several years the Alabama Compensation Law didn't pay a man for the first two weeks, did it?

A. I couldn't say how long, but we didn't have a man off that long.

Q. Well, suppose a man were hurt and stayed off three days; would that be counted a lost time accident?

A. No, sir.

Q. Suppose he stayed off ten days, would that be counted a lost time accident?

A. I couldn't say; I don't know.

Q. Well, suppose a man jumped into this skip and another fellow jumped in and landed on his hand or his ankle and he couldn't continue to muck ore and couldn't continue to run a drill; would you, as mine foreman, put him at something else while his hand or foot was injured so he could keep on working?

A. Any man that gets hurt and goes to see the doctor, he is off until the doctor says he can come back.

Q. All right. And my question was if he got hurt to where he couldn't run his drill or run his mechanical loader on account of an injury he had received, would you switch him to a lighter job so he could keep on making a shift?

A. If he so desired that, I would.

Q. And, of course, where you shifted him and he kept on making a shift, that would not have counted a missed time accident, would it?

A. Not if we should have it.

Q. Now, the company required all men who went into Mine Number 4 to go down on those man skips, didn't it?

A. Yes, sir.

Mr. Harris:

That is all.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Goodwin, I wasn't emphasizing the lost time. Are all accidents reported, whether lost time or otherwise, in the mine?

A. Regardless of how slight an injury a man gets, he is supposed to report it to the mine foreman and outside tally man and be written up, whether he reports to the doctor or not.

Q. That is without reference to whether he is off at all or not?

A. Yes, sir.

Q. And when he is off on lost time, does he get a return to work slip from the doctor?

A. Yes, sir, he gets a return to work slip from the doctor, and gets it O. K.'d by the superintendent's office.

Q. The company has records of all accidents, whether lost time—

Mr. Harris:

I think Mr. Burr is leading him.

The Court:

I think we have gone into that enough.

Mr. Burr:

I don't think it has anything to do with the question here. If it becomes material we have our records to show—

The Court:

It is not material.

Mr. Burr:

Come down.

(Witness excused.)

The Court:

Who is your next witness?

Mr. Burr:

I think I will take Mr. Halfpenny next.

I have three or four other witnesses here, but it is repetition of the same testimony.

The Court:

I think if it is repetition—

Mr. Burr:

It is. You can tell. It is a different mine, but it is the same general proposition. For instance, I have got Mr. Stone here, but his testimony would be very similar to that of Mr. Carter and Mr. Goodwin.

The Court:

Well, we have enough to do without repetition.

Mr. Burr:

Come around, Mr. Halfpenny.

1756 JOSEPH HALFPENNY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Halfpenny, what are your initials, please, sir?

A. Joseph Halfpenny.

Q. In order that I can ask this question first, were you born in the United States or not?

A. No. I am a man of Kent. I was born in Kent, England.

Q. What kind of education did you have in England before you came here?

A. My formal education was at St. Peters, Tornbee Hall, and Woolwich. I didn't graduate because there were no industrial degrees at that time.

I got my technical training and experience with the Great Eastern—

Q. What kind of company was that?

A. A railroad company, had shops—

Q. When did you come to the United States, Mr. Halfpenny?

A. In—Must have been—Let me see,—1917, to take care of coal shipments from Hamilton, West Virginia, for the British Government in Canada.

Q. And have you been here ever since then?

A. Yes. After the Armistice I came down with the Tennessee Company.

Q. When did you come with the Tennessee Company?

A. In the Fall of 1918.

Q. And what position do you hold with them at the present time?

A. Chief Industrial Engineer.

Q. You are, then, the head of the Industrial Engineering Department?

A. Yes, sir.

Q. Just tell me in a general way what are the duties and responsibilities of that department?

A. I report to the two vice presidents, one in charge of raw material, and the other in charge of manufacturing operations.

I am responsible for all hourly wage rates, all methods of wage payments, and am a member of the classification committee on salaries, chairman of the salary committee for the United States Steel Corporation, and a member of the wage committee of the Tennessee Company.

Q. Did there come under your direction and supervision in your capacity as Chief Industrial Engineer, the classification of jobs and the evaluation of jobs?

A. Yes, sir.

Q. Does there also come and has there come under your supervision and the supervision of your department the consideration of the wage structure?

A. Yes, sir.

Q. And wage increases that are granted?

A. Yes, sir.

Q. And things of that sort?

A. Yes, sir.

Q. Mr. Halfpenny, did you have charge of assisting in the devising and installation of what has been referred to here by the witnesses as the incentive plan?

A. Yes, sir.

Q. Do you recall when that plan became effective; when it was first put into operation?

A. It was effective May 1st of 1936, but didn't operate until August 19, 1936.

Q. Before it was formulated as a plan had there been any preliminary studies or suggestions made by you or by others under your supervision about—

Mr. Brodie:

I object to that, if the Court please.

The Court:

Overruled.

Mr. Brodie:

And in order that there may not be any misunderstanding, is it understood that I have an objection and exception to all this line of testimony respecting the incentive plan?

The Court:

Yes, sir.

Mr. Burr:

That is all right.

Q. Did you understand the question?

A. Yes, sir.

Q. Please answer it.

A. Studies were made by mining engineers over a number of months of operations at the iron ore mines principally.

There was a break down of the various kinds of work, and time studies were made setting forth in detail the time occupied in loading, drilling, shooting, dragging, delayed time and the reasons for the delays and so forth, and as a result, the management of Red Mountain, Mr. Ball, recommended—

Mr. Harris:

We object to that.

Q. Never mind what he recommended. Tell what was done and how the plan was reached.

A. All right. I was asked to approve a straight tonnage rate. I looked into it and found on a fair day's work that tonnage rate would be 22½ cents a ton. That means if a man or crew mined ten tons they would get paid for ten tons, and if they mined a hundred and fifty tons they would get paid for 150 tons.

From an industrial engineering standpoint, that was not sound, so I recommened, and it was adopted, that an incentive plan be substituted for the tonnage basis, and instead of paying at the fair day's production of 150 tons per crew 22½ cents per ton, the incentive plan paid at 134—I should have said 168 net tons. It was put in on a gross ton basis. I will think back in net tons now. Instead of paying 22½ cents per net ton, we paid 28 cents per ton for 134 net tons, which was at 80 percent of the standard.

Q. Let me see if I understand that. Eighty percent of the standard,—how did you reach the standard?

A. The standard was 168 net tons.

Q. How did you find out that was the standard?

A. That was developed from the studies made which showed about one-half of the eight hours work at the face was productive time. As a matter of fact, the exact figure, I think, was about 4.4 hours. The rest of the time, 3.6 hours, was taken up with delays, with unnecessary things that were done, with overlapping and so forth. There was a nine man crew. The head miner was boss and didn't work and bossed the crew.

Q. That was under the old system?

A. Yes. There were two drill helpers when one was more than sufficient, so automatically the crew necessary was indicated to be seven men.

At the rate of production by the nine-man crew per man per hour, translated into the 7-man crew, together with the additional unproductive time which was made available for production, the standard began at 168 net tons,—just a simple arithmetical calculation.

When the incentive plan—I said we paid 28 cents per net ton instead of 22½ with the result that with 100 percent prformance of ore production, or 168 tons, the crew got 10 percent over their occupational rate, which was an evaluated rate for that job for eight hours work on that kind of work.

When the—from the 100 percent performance to 120 percent performance, we paid 25 cents.

The result was that at 120 percent of performance the curves cross the straight tonnage curve and the percentage curve, and we paid exactly the same in the incentive plan as the tonnage basis of 22½ cents per ton. Up until that time we were paying more on the incentive plan than we would on a straight tonnage basis, but from then on the company would get their innings, and after that time it ran below 20 cents as you got to 140 percent and so on efficiency.

Q. As I understand by that the two lines crossed?

A. Yes, sir.

Q. Up to that point under your incentive plan the men were getting more than they got before?

A. Yes, sir.

Q. After that point, after the production exceeded that point, the company began getting—

A. Yes, sir, the company began to gain after 120 percent performance.

Q. Did the men get more too as they passed beyond that point, or not?

A. Oh, yes; they got 10 percent at 100 percent of standard, 20 on 120 percent, 30 at 140 percent, and so on over their occupational rates.

Q. In fixing your occupational rates, was each job valued?

A. Yes, sir.

Q. How did you reach that valuation?

A. First of all a job description is made up, covering everything that the job is responsible for. That is also broken down to show how much time is spent on each particular duty, the equipment that is used, the supervision that is exercised, and the responsibility that is involved.

For example, we take the view that every man is responsible for his own safety.

Secondly, he is responsible for the safety of the people working around him.

Then he is responsible for the safety of the people he supervises.

Then he is responsible for the equipment he uses; he is responsible for the supplies and materials he uses; he is responsible, too, for the quality of the material that he produces.

We then make an allowance for his experience. It takes a certain number of years to acquire certain mini-

mum experience to do certain jobs. A certain minimum education is required. Allowance is made for that. A certain known skill, which is a combination of experience and education, is also required. Then accuracy is very vital in many occupations underground.

Then there is a question of the surroundings, the hazards of the job, the conditions of the job, whether it is wet or dry or dusty or hot or cold or whatever it may be, and then there is the physical effort required, and then on top of that there is an element known as fatigue which is a combination of mental effort, physical effort and the amount of work which is done.

All that is added up. Then we have the given occupation, a given occupation or rate to be paid a head miner. A tabulation results, which through the years, has acquired a certain—.

Q. And that supposed experience over the years with reference to the amount of production you worked your standard up on would be considered too, would it?

A. Yes, sir.

Q. In that way, without going into detail, each job was evaluated separately?

A. Yes, sir.

Q. And in making that evaluation, was it made on a 10-hour day or 8-hour day?

A. Eight-hour day.

Q. Was every calculation made on an 8-hour day?

A. Eight-hour day.

Q. Were the calculations on work time or traveling time?

A. Work at the working place.

Q. Were all calculations made on that basis?

A. Yes, sir. We found that the drill helper, who was paid three cents less than the mucker, was doing just as good a job and worth just as much as the mucker, and we changed that rate to the same as the mucker on the incentive plan.

Q. You say by reason of the strike the incentive plan didn't go into effect until August 19th?

A. August 19th.

Q. That was under the Governor's settlement, you will recall?

A. Yes, sir.

Q. Has it been in effect ever since?

A. Yes, sir.

Q. In effect now?

A. Yes, sir.

Q. Have you had anything to do, Mr. Halfpenny, with any—with the wage increases that have been made since that time and wage adjustments growing out of negotiations with the committees of the unions and employees?

A. Yes, sir, I am instructed, after agreements are come to, for any reason, between employees or by an opinion or decision of management, to make the necessary changes or adjustments.

In 1934, for example,—

Q. I want you to start there and tell me the times that there have been adjustments following these negotiations.

A. In 1934 there was a general ten percent increase, but there were many adjustments also. In some cases we found ten percent was not enough, and that was adjusted.

Q. Wait a minute right there. When you gave that ten percent increase and gave the specific increases on jobs in addition to that, were those on basis of eight hours, face to face?

A. Yes, sir, and unless I say to the contrary, all my calculations were on face to face. I know nothing else.

Q. Have all your calculations been on an eight-hour basis?

A. Yes, sir. Our wage scale bears that at the head of its caption.

Q. You mentioned the 1934 increase. When was the next one?

A. On June 28th, the same year.

Q. What was that increase?

A. It was not a general wage increase. It was known as a general wage adjustment. A substantial number of wages were adjusted on Red Mountain.

Q. Was that following an investigation of certain complaints?

A. I can't say; I understand so.

Q. When was the next adjustment?

A. The next was the incentive plan, which increased earnings but did not increase rates.

Q. Off hand, can you give me how much it increased the earnings during the year 1940?

A. I couldn't give you in money, but between 5 and 10 percent.

Q. It amounted to—

A. Increased earnings.

Q. After that, when was the next wage increase?

A. After the incentive plan in August, 1936, there was a general wage increase November 16th. For the first time departures were made from a general overall percentage basis.

Before the increases and decreases of a general nature were either 10 percent increases or 10 percent decreases, or 15 percent, whatever it might be, but in November, '36, a new method was applied, so many cents per hour, and according to the hourly rate, so many cents were added, common labor receiving the highest number of cents per hour and being less as it went up.

Q. Still on the basis of 8 hours at the face?

A. Yes, sir.

Q. All right.

A. On March 16, 1937, another general increase on a similar basis, so many cents per hour, and since then, there have been individual adjustments, usually on request of the men, but sometime on the request of rate

adjustment on the part of the management for about 15 specific occupations where advances were made, and rates were adjusted.

That brings us up to May 1st.

Q. Well, wasn't there a general increase of ten cents an hour? When was that?

A. May 1st of this year.

Q. May 1st of this year?

A. Yes, sir.

Q. Was that effective May 1st or April 1st, that general increase of ten cents an hour?

A. May 1st—

Q. I see.

A. No, April 1st is right. That is right. I was thinking of the portal to portal.

Q. The wage increase was effective April 1st.

A. Yes, sir.

Q. And ten cents for each employee?

A. For each hour worked.

Q. All those followed negotiations between the employees and the management?

A. So I am informed. I can't speak directly as to that.

Q. Now, did you have charge of working out the—such changes as were necessary in your wage structure to put in the portal to portal plan on May 1st?

A. Yes, sir.

Q. Well, now, will you explain to the Court just how you did change the incentive plan to meet that situation?

A. We did not change the incentive plan. We simply changed our base of eight hours of work to six and a half hours of work, so that the incentive standard was the man hours directed to six and a half hours instead of to eight hours, a difference of a little better than 18 percent less.

Q. Do I understand by that that the man's—under the portal to portal system you are now operating under the

wage scale, the man begins to participate in the earnings on the same proportion, you might say, that the six and a half hours bears to eight hours?

A. Yes, sir.

Q. How much is that per ton?

A. It isn't a per ton base. The percentage is not on a per ton base. It is on a standard base, the production per man hour.

What you want to know is has it resulted in the men earning more incentive pay?

Q. Yes.

A. Yes, it has.

Mr. Harris:

We object to that, if the Court please.

Q. That is what I want to know. Has it resulted in the men earning more incentive pay under the six and a half hours, than in the eight hours?

A. On a percentage basis. Not more in money.

Q. How much is it on a percentage basis?

A. About 15 percent. It was about .5 percent before.

Q. Formerly, how much did they have to get out, a seven man crew,—how much did they have to get out on the eight hours before they began sharing in the incentive earnings?

A. Prior to the installation of—

Q. Yes, sir, prior to May 1st.

A. You might repeat that. I didn't quite get that.

Q. When they were working on the eight hours face to face—

A. Yes, sir.

Q. —how many tons did the 7-man crew have to produce before the men began to get incentive earnings?

A. 134 net tons.

Q. Since May 1st, how many do they have to produce?

A. 81 percent of that.

Q. 81 percent?

A. I don't know what the exact figure would be.

Q. That gives it. Now, since the new system went into effect on May 1st, has there come under your department and your supervision the question of the amount of production—

Mr. Harris:

Same objection.

Q. —as contrasted since then—

The Court:

Overruled.

Q. —with the period before then?

A. I have had the responsibility of reporting if production is not what we find it should be, and production has dropped approximately 10 percent.

Q. Have you got the actual figures?

A. They are available, if you want them.

Q. I want to get them now.

Mr. Harris:

I assume we have the same objection.

The Court:

Yes, sir.

Mr. Burr:

Suppose you mark this series of exhibits.

The Clerk:

This will be 24.

Mr. Burr:

And make this 25.

(Thereupon a statement showing iron ore tonnage deficiency during May and June, 1941, based upon average tons per turn for January, February, March and April, 1941, was marked T. C. I. Exhibit No. 24.)

(Thereupon a graph entitled "Statement Showing Iron Ore Tonnage Deficiency during May and June, 1941, Based Upon Average Tons Per Turn for January, February, March and April, 1941," was marked T. C. I. Exhibit No. 25.)

Q. Mr. Halfpenny, I am showing you Tennessee Company's Exhibit 24, and I will ask you to state whether or not that is a correct statement of the production by tons and by percentages—

A. Yes, sir.

Q. —as appears there?

A. Yes, sir.

Q. In order that the Court can understand it, I notice in the left hand column under the heading, "Mine Number," is Mine Number 4. Mine Number 4 is one of the Muscoda mines, I believe?

A. Yes, sir.

Q. You have in the next column standard tons per turn, 1390, and you have an asterisk indicating "Standard Tons per Turn Based upon January, February, March and April, 1941."

A. Based on eight hours work at the face, that would be the production per turn based on the experience.

Q. And the turns operated were—

A. Forty-four in May.

Q. Forty-four in May?

A. And if those 44 turns had been the same kind of 8-hour turns as they were in the first four months of 1941, the production would have been 61,160 tons.

Q. What did they actually produce?

A. They actually produced, because the turn was 6½ hours of work, 56,376 tons, a reduction of 4,784 tons, or a reduction of 7.82 percent.

Q. That is true on down for each one?

A. Yes, sir.

Q. That is made out for the months of May and June?

A. Yes, sir.

Q. Those are the only records available at this time?

A. Yes, sir.

Mr. Burr:

We offer that in connection with his testimony.

Mr. Harris:

We object.

The Court:

Yes.

Q. We ask you to examine next Tennessee Company's Exhibit 25, which purports to be a graph, I think I will call it. Will you explain to the Court what those lines indicate there, what they show by—

A. This shows the tonnage deficiency during May and June, 1941, based on the average tons per turn for the first four months of the year, showing each day during the two months of May and June with a broken curve to indicate the production based on the first four months and the solid curve showing—

Q. The broken line showing standard production, eight hours face to face, first four months of 1941?

A. Yes, the broken line showing standard production, eight hours face to face, first four months of 1941, and

the solid line showing the actual production, portal to portal for the months of May and June.

The Court:
That is merely a graph?

Mr. Burr:
A graph of the other.

The Witness:
In graph form what you had there in the statement.

Mr. Burr:
That is all.

Cross Examination.

(By Mr. Harris):

Q. This incentive plan is something, to use an American expression, that you are the daddy of, isn't it?

A. No. It is what is known as the Halsey 50-50 plan, with which all economists an industrial engineers are thoroughly familiar. There are a number of incentive plans, but this is one everybody is perfectly familiar with. For instance, this plan is in use in the Carnegie-Illinois Steel Company and the Bethlehem Steel Company and I think Westinghouse uses it.

Q. The Carnegie-Illinois is a subsidiary of United States Steel?

A. Yes, sir.

Q. And then Bethlehem is another steel producer, isn't it?

A. That is right.

Q. Now, when you started working on this incentive plan, did you go and consult the workers to ask them whether they wanted an incentive plan?

A. No, that doesn't come under my jurisdiction. That is a matter for our Industrial Relations group. I haven't got that responsibility.

Q. Did you consult the union leaders to see whether they wanted an incentive plan?

A. That is not my responsibility.

Q. Did you call in any laborer, any ore miner, any mine foreman or any union officers to help you or assist you in your accumulation of factors or evaluation of factors that went into your calculation?

A. Can I break that up into about three parts, that question, and answer them separately?

Q. Yes.

A. The first part of it was did I discuss the question with any employees or unions or foremen. So far as foremen and employees are concerned, yes. I presented the plan to the head miners first—

Q. Where did you—

A. Just a minute. —and at that meeting Mr. Ball and the various mine superintendents were present. The thing was gone into in great detail, explained to them minutely. They asked questions and they were answered, and they were all given a copy of it to take away with them. I think we gave away on that particular day 180 copies.

Q. You couldn't give them copies unless you had already figured out the plan?

A. You said had I discussed with them—

Q. Before—

A. That is another part of the question.

Q. That was the first part. Did you do it before you figured out your plan?

A. No.

Q. You figured out your plan and had 180 copies of it and distributed them?

A. Yes, sir.

Q. You used the term, a fair wage.

A. A fair day's work.

Q. Did you go to any of the men and ask them what a fair day's work was?

A. And they agreed it was. Have you got that thing which I presented to the men in which they agreed it was a fair day's work?

Q. I mean before you figured out your percentage plan?

A. I am still at a loss to understand you. I don't see how I can take up anything with anybody before I figure it out. Give me the papers.

Q. Wait a minute.

A. I will read it out.

Q. Did you ask the men what they thought was a fair day's work before you figured out your incentive plan?

A. No.

Q. Have you ever yourself been down in a mine and mined ore?

A. No, sir.

Q. Have you ever—

A. Let me finish the answer. I have been down in a mine and shoveled sand but I have never mined ore.

Q. Have you ever been down in a mine and served as a member of a timber crew?

A. No, sir.

Q. Or a track crew?

A. No, sir.

Q. I believe you say you got your education in England?

A. Yes, sir.

Q. And during the World War you represented the British Government?

A. Yes, sir.

Q. You don't represent the British Government now in this war?

A. Unfortunately, no.

Q. I presume you are an American citizen?

A. Yes, sir. I was naturalized in 1924.

Q. And when you were hired by the Tennessee Company to figure out this incentive plan, were you paid on a straight salary basis or did you get a salary plus a bonus?

A. Unfortunately, a straight salary.

Q. And are you still on a straight salary basis?

A. Yes, sir.

Q. And have been since your incentive plan went in?

A. Since my employment.

Q. And in working out the incentive plan, you, as an efficiency engineer,—I suppose you could call yourself an efficiency engineer?

A. Names don't make much difference.

Q. What is that?

A. Names don't make much difference. They judge me on what I do.

Q. You said you were an industrial engineer?

A. Yes, sir.

Q. And since you named it, I wanted to know whether you would name it that you were an efficiency engineer?

A. The history of the term of industrial engineer goes through that phase. Some few years ago that was the term used.

Q. Your object in working out the incentive plan for the Tennessee Coal, Iron & Railroad Company was to devise a plan here that they would get a maximum return for the least expenditure of wages, was it?

A. No, sir. My instructions were any plan I devised must be such as the men could not lose but they could only gain, so, therefore, the first thing I had to do was to get official indorsement of a guarantee, you see, for the eight hour period worked at the occupational rate for each of the men working, whether they produced one ton of ore or not,—a wage that they got even though they

didn't produce anything. In other words, those were my instructions, they must—

Q. You mean you must get official indorsement from the company or get official indorsement of the men?

A. Get the official indorsement of the management, because they were paying out money, which, in some cases, would be for nothing, so I had to get the approval.

Q. Naturally your incentive plan results, if the men really stretch out and really put forth energy,—it results in them getting less for what they do after they reach 120 percent, doesn't it?

A. No, sir.

Q. Well, now, isn't it a fact up to 120 percent the men are gaining?

A. No, sir.

Q. At 120 percent then the two curves cross?

A. Yes, sir.

Q. And you testified a while ago after 120 percent then the company had its innings?

A. Yes, sir.

Q. All right. Then, the company after 120 percent, begins to derive more from it than the men do, don't they?

A. True.

Q. Yes.

A. And they have to go to 180 percent before they balance up for what they have overpaid the men from 80 percent to 120 percent.

Q. What they overpaid them?

A. Yes, sir.

Q. Do you mean you figured out a plan whereby from 80 percent to 120 percent your employer would be consistently overpaying the man?

A. That was the incentive.

Q. Paying them more than the work was worth?

A. That was the incentive.

Q. To pay these men in the ore mines more than their work is worth?

A. That is their incentive.

Q. And in paying them more than their work is worth, if they reach the 120 percent, as you have stated before, they are paid on a 25 cent per ton basis, and up beyond that it drops down to 22½ cents?

A. And down to 20 cents later on.

Q. So that actually the harder the man worked at the end of the day, and was producing more ore, he was getting less when he was working while fatigued and worn out for a ton of ore than he got for a ton that he produced in the early part of the day, didn't he?

A. I don't want to go into all the details—

Q. But I want you to answer the question.

The Court:

Answer that question yes or no.

A. No.

Q. Suppose he produces up to 119.99 percent; he would get a certain rate?

A. Yes, sir.

Q. Then suppose he produces up to 130 percent; that last 10.01 percent, he wouldn't get paid for at the same rate he got paid for on the other?

A. No, sir, paid less.

Q. Paid less?

A. Without all those adjectives about fatigue and so forth.

Q. I want the figures.

A. The men are not fatigued when they get through. That is an overall constant.

Q. Overall constant?

A. Yes, sir.

Q. Don't you know fatigue is a variable, and starts here on a level,—a man is fresh and has no fatigue,—and

as the hours of labor increase his fatigue increases; it is almost a matter of arithmetical progression before it gets through.

A. If it were possible for a man to work straight through he would drop dead. You exercise and relax; you exercise and relax. If motions are properly synchronized, you can maintain a fatigue level all through. You can tell that by seeing the men running home from work.

Q. Running home from work?

A. Yes, sir.

Q. Did you ever seen them running out of the mines—

A. Yes, sir.

Q. —with the steel and oil and the wedges and hangers hanging on one arm, and their lunch basket on the other arm, and running out of the mines to get to the skip?

A. There used to be a term called the race to the bath house. Perhaps you have never heard of it.

Q. I asked you if you had ever seen them running from the place of work to get to the skip. I asked you a specific question.

A. No, sir, because they would be underground, and I don't think I had ever been underground at that time.

Q. You mean you figured—

A. I have seen them on the surface running home.

Q. You mean you figured all this incentive plan out for these men without being underground?

A. No, I have been underground, but usually during work time; usually quit before the men did, so, for convenient reasons, there would not be any hold up of the men.

Q. So you were never there to see whether the men were joyously running home?

A. Not underground.

Q. Don't you know in human experience the longer a man works the greater the fatigue becomes until he can't work at all?

A. I said if he continued to work he would drop dead.

Q. He has to have a long period of relaxation?

A. No. In some shops it has been found five minutes per hour compensates; in some it is ten minutes.

Q. It doesn't make any difference if he gets five minutes rest an hour,—it doesn't make any difference whether he works eight hours or 18 hours?

A. On some kinds of work, no, but I would say that experience—

Q. Does it go up—

Mr. Burr:

Let him answer.

A. —has shown eight hours is about the basis, although Levy Brothers, some while ago, started an eight-hour turn and worked straight through, and they got very good results there.

Q. You don't eliminate sleep from the necessity of a working man?. He has got to have some time to go to sleep?

A. If he will avail himself of it, he would.

Q. Is it your idea a man would be just as efficient and produce just as much working 16 hours a day as working eight hours a day?

A. No, sir.

Q. Would the rate of production go down if he worked 16 hours?

A. I would say it would go down considerably.

Q. Whereabouts does the rate of production in your calculations start to go down?

A. I would say after eight hours work.

Q. That his point or his zone of maximum efficiency ends at eight hours?

A. With proper allowance for personal and fatigue rests, eight hours would be about the maximum efficiency overall.

Q. By eight hours, you mean eight hours of physical effort, is that what you mean?

A. Yes, sir.

Q. And whether that physical effort is holding a drill or holding a jackhammer, or carrying tools, or climbing up 134 steps, it would still be an eight hour period of physical effort, wouldn't it?

A. On that type of work, I would say yes.

Q. The men, when the incentive plan was handed to them,—do you remember what day of May, 1936, the incentive plan was handed to the men?

A. I think it was before, but I can't remember the dates. I think it was just a few days before.

Q. How long was it after the incentive plan was handed to the men who worked down under the earth that these men went on strike?

A. I think it was about a week.

Q. About a week. Now, the incentive plan that you devised cut down the number of men on a crew, didn't it? Before you devised that plan a crew consisted of nine men?

A. Yes.

Q. When you got through with it, it consisted of seven men?

A. Yes.

Q. So you were cutting down the number of men you were paying what percent?

A. As 2 is to 9.

Q. As 2 is to 9?

A. Something like that.

Q. So that would be 22-2/11 percent?

A. Something like that.

Q. And you cut down the producing basis only 20 percent, didn't you?

A. I increased the production basis. I didn't cut it down. I increased it. I expected the 7-man crew to produce more than the 9-man crew.

Q. So, you were—the company had been overpaying them up until the time you put this in, and you cut down the amount of overpay the company had been giving them?

A. Yes, sir. They had been substantially overpaid before then.

Q. And you cut it down for the company?

A. I cut it down to a fair day's work.

Q. Now, the result of your incentive plan, if the men worked harder and did produce above the 120 percent, did increase their day's production per man, that made the number of men necessary to be employed in the operation less, didn't it?

A. Yes, sir.

Q. Now only in the particular crew, but throughout the mines?

A. Yes, sir.

Q. So that at a time when unemployment was rampant in America you were fixing it so that fewer men would do more work instead of giving more jobs to more men, weren't you?

A. Yes, sir. That is the history of American progress, the development of methods whereby men can produce more in the same time. I am very proud of it.

Q. And the curve of American progress has been constantly getting more production out of the men, hasn't it?

A. Yes, sir.

Q. Now, have you, in your mathematical calculations, drawn a graph and figured out the breaking point when they will no longer be able to make money out of the men?

A. I don't think there is such a point. You see, these things go together. You don't simply have the effort of the man by himself, but you have improvements in the

method of operation, improvements in machinery. They all go together with the result your production per man will increase, your earnings per man will increase, and the cost of your unit you produce is reduced by the fact that the total bill for every item that goes into the finished product is reduced per unit, and that includes labor and everything, sir.

Q. And mathematically speaking, your problem is to get the maximum result in the production with the minimum cost?

A. With the highest possible earnings,—always higher earnings.

Q. But your major problem is to get it at less cost?

A. The cost is outside my province. I am concerned with greater production, and if I am not mistaken, that means a decreased cost.

Q. And reduce men?

A. Yes.

Q. And it will keep on reducing the men necessary for the work?

A. In that particular line of work, but you will increase the necessity for men in other fields of work.

Q. You mean by other things and different lines of business?

A. I mean automobiles and so on. Of course, the standard of living increases as you increase the production per man hour.

Q. But you mean by paring them off the steel industry and ore mining industry, and as you pare them off, and as other efficiency engineers pare them off, then they will be available to somebody else until you get a—

A. That is how you elevate the standard of living.

The Court:

I think you have gone into that enough.

Mr. Burr:

I will want to ask him one question when he is through.

The Court:

I don't mean to cut you off.

Q. When you used the term fair wage, you were limiting a fair wage to the factor of production, what they had produced before?

A. The fair wage, as I told you, was based on what is known as our manual of wage or job evaluations. First of all is responsibility. We believe most any kind of a job has responsibility. That is responsibility for the safety of yourself—

Q. You went into that?

A. Yes, sir.

Q. I don't want you to repeat it so I will ask my questions.

A. Yes.

Q. In figuring your fair wage, did you go into the other angle or other end and figure out what the employees' needs were; did you take his needs into account in figuring out what was a fair wage for him?

A. No. A fair wage is based upon the pool of the district. In every district—for example, in this district there are certain key jobs which have existed over a long period of years, and through the hurly burly of the market have acquired certain values in relation to other jobs. Bricklayers, for instance, are paid so much, and miners are paid so much; and there is a relative value between those various jobs that is pretty well established throughout the district.

Q. All right.

A. So, in attempting to establish a fair rate, the industrial engineer takes a key job like a head miner or brick layer and determines the rate for that in comparison with other similar jobs.

Then there is another constant which changes more rapidly than the other, and that is the common labor rate. So, to put it roughly, if you draw a line from, say, 45 cents, the common labor rate, up to 97 cents, the machinist rate, or 77 cents, the head miner rate, you get a like curve by which you can establish a fair wage for all occupations are they are related to those two jobs.

Q. So that means, when you say you were figuring out a fair rate, that meant you were figuring out a fair evaluation of the rate for that job to receive in comparison with the existing rates that were paid in that district, doesn't it?

A. Existing, established rates,—put it that way.

Q. Existing, established rates?

A. Yes, sir.

Q. Now, you took those rates, whatever they were,—

A. Yes, sir.

Q. And you integrated them, so to speak,—

A. Yes, sir.

Q. —and arrived at a fair rate for a particular job?

A. Yes, sir.

Q. You didn't go back—suppose you found that man over here in a plow factory making plows, and he is getting a certain amount of pay per day; you took that as a constant, which entered into your calculations, didn't you; he was getting so much; you didn't make any inquiries from a social or human relation standpoint to see whether or not the man in the plow factory was actually being paid value received for the amount of work he produced, did you?

A. Well, we took a key position right on Red Mountain, the head miner, and we did go into that to see whether he was paid a fair wage for what he was doing.

Q. But what I am getting at, you didn't go back into these established, existing wages paid throughout the district, and in other districts, and make any inquiry or investigation to see whether or not—

A. Yes, sir, we made a very complete investigation of all wages not only in this district but in all other districts of the United States, and among other things, it is my responsibility to keep up to date with the statistics published by the Department of Labor with regard to the cost of living and wages and so forth, we find them very helpful, and particularly on the production, because Mr. Jackson of the Bureau of Mines confirmed everything we did.

Q. I don't want you to go off into a conversation with Mr. Jackson.

The Court:

Confine your answers to his questions.

Q. In taking established, existing rates, you took that in 1935 and 1936, didn't you?

A. Yes, sir.

Q. The depression was on then, wasn't it?

A. Yes, sir.

Q. And the established, existing rates in 1935 and 1936 were nothing like as high as they were in 1929 and 1928 before the crash and depression?

A. Yes, sir.

Q. What is that?

A. Yes, sir, they were not.

Q. They were not?

A. No.

Q. And all these factors that you went into and took into calculation, the Wage and Hour law came in and wiped out a lot of that, didn't it?

A. No; that just changed the curve. You see, when you elevate the common labor your curve, instead of going that way,—this was less,—started that way and flattened it out.

Q. That changed the way of distributing this fair wage you are talking about?

A. But I may add since November of 1936 this method of adding so many cents per hour, rather than a flat ten per cent, is also doing the same thing because ten cents per hour means about 22 percent increase in the common labor rate, whereas on the craftsman rate it means about ten per cent.

Q. So, the common labor—

A. Is gradually coming up.

Q. If—because he starts off with a less base, and an hourly increase is a higher percentage to him than it is to the other man?

A. Yes, sir.

Q. The incentive plan was not devised with any reference to the Wage and Hour Law, was it?

A. No, sir; that was before then.

Mr. Harris:

I think that is all. I don't think I want to ask him anything else.

Mr. Burr:

Judge, I have about three minutes, and I will be through.

The Court:

I think we will take him up tomorrow morning. While we think of it, the Court will recess on Friday until Monday morning, and we will recess according to the new daylight saving time, the government time.

We will recess—Court will convene tomorrow morning at 9:30.

(Whereupon at 4:35 P. M., July 16, 1941, an adjournment was had to 9:30 A. M., July 18, 1941.)

July 18, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
Who will you have?

Mr. Burr:
Mr. Halfpenny was still on the stand.

Mr. Harris:
I have no further questions.

The Court:
You have no further questions?

Mr. Harris:
I have not at this time.

The Court:
Do you want to ask some questions?

Mr. Burr:
Just a minute, Judge.

1789 JOSEPH HALFPENNY thereupon resumed the stand, and having been previously sworn, testified further as follows:

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Halfpenny, on cross examination yesterday, Mr. Harris asked you about whether or not you discussed the incentive plan after you had designed it in the way you told us you did design it, and I believe you said you did with the Union; was that what you said?

A. You mean—

Q. The union committees. Did you discuss it and explain it to the committees of both unions? I believe there were two at that time, one called the Brotherhood and one called the Smelters Union?

A. Yes, sir.

Q. Now, at that time did you have this synopsis or memorandum you asked for yesterday giving a description of the plan?

A. Yes, sir.

Q. Is this the copy you had and read over to the men?

A. Yes, sir, and gave them copies.

Q. Gave each of them copies?

A. Yes, sir.

Q. Did you discuss it with them item by item?

A. I read it entirely.

Q. Read it entirely?

A. Yes, sir.

Q. During that discussion did any of them make any complaint or raise any complaint about the plan because it was based on the face to face basis or not?

A. No, sir.

Q. Did not?

A. No, sir.

Q. The discussion occurred whereabouts?

A. At Mr. Ball's office on Red Mountain, and then at a room in the commissary on one occasion.

Q. What was that meeting?

A. When we discussed it with the head miners.

Q. In addition to the meeting with the union committees you discussed it with the head miners also?

A. Yes, sir.

Mr. Burr:

We want this identified, if Your Honor please.

The Clerk:

It will be T. C. I. Exhibit 26.

Mr. Burr:
All right; we offer that.

(Thereupon the synopsis of the incentive plan was marked T. C. I. Exhibit No. 26.)

Q. I am not competent to get into an economic discussion with you, but I want to ask you one or two facts. Did this incentive plan, did it or not increase production?
A. Yes, sir.
Q. Did it or not increase the wages of the men?
A. Yes, sir.

The Court:
He has testified to that, Mr. Burr.

Mr. Burr:
I didn't know whether he had testified to it or not.

Q. You gave yesterday an oral statement of the changes you made in the incentive plan to take care of going on the portal to portal basis in May.
A. Yes, sir.
Q. I want to show you a paper—

Mr. Burr:
Mark this, please.

The Clerk:
T. C. I. Exhibit 27.
Q. —marked T. C. I. Exhibit Number 27.

Mr. Burr:
Do you want to see it before I ask about it?

Mr. Harris:
What is the date?

Mr. Burr:
May 1, 1941.

Q. I want to ask you if this is a statement of the changes you submitted to the management and also to the employee as to what changes should be made—

Mr. Harris:
I understand that is subsequent to 1938, and we all have an objection to the evidence about the incentive plan.

The Court:
Yes, sir.

A. Yes, sir.

Q. Will you explain that to us?

A. It is a statement showing the application of the incentive plan to the proposed work day of six and a half hours in the face as compared with the work day of eight hours, and it takes a typical crew of seven men, and shows the application on—shows the conditions when the number of hours of face to face work is eight and the conditions when the number of hours is portal to portal, six and a half. Then the number of tons per man hour is shown. The standard tons per man hour was the same, three tons.

Q. You mean by standard—what do you mean by standard?

A. Standard means the pay starts—

Q. The incentive pay begins?

A. Yes, sir.

Q. Go ahead.

A. And then the relative percentages of the standard.

Q. What is the standard?

A. In the case of eight hours, 134, and in the case of six and a half hours, was 120.

Q. What is the standard—

A. The same; three tons per man hour. If you want me to answer what we have experienced, that is a different thing, but this statement was made before.

The Court:

We will not go into that.

A. It gives the ton earnings, the hourly rates, travel time, the amount of the incentive earnings, the total earnings, which include the traveling time, the loss of incentive earnings because of working an hour and a half less, and then it goes into these different things which ought to come out of this statement.

Mr. Burr:

We don't offer anything in reference to our costs. I believe his explanation is clear enough without offering this as an exhibit.

The Court:

That is Exhibit 27?

Mr. Burr:

Yes, sir. We will just—we will not use it.

The Court:

Sir?

Mr. Burr:

I will not use it because it has got these cost items on it

The Clerk:
Just withdraw it?

Mr. Burr:
Yes, sir.

Mr. Harris:
I inquire of counsel and the Court, you used that as a basis of his testimony?

Mr. Burr:
I will just withdraw his testimony in reference to it. That is the best way to handle it.

The Court:
All right, withdrawn.

Q. Now, you were asked the question as to whether or not in your consideration of this incentive plan and putting it into operation, as to whether or not you considered the Wage and Hour Law and you said of course you didn't, because it wasn't in effect at that time.

I want to ask you this question, Mr. Halfpenny: If at any time the minimum wages paid the underground ore miners in the last, say, ten years have ever been as low as thirty cents an hour.

Mr. Harris:
We object as calling for a conclusion of the witness.

The Court:
I sustain it.

Mr. Burr:
We except, Your Honor. It is not a conclusion. It is whether or not he knows what they have paid.

Q. Could you tell me--

Mr. Harris:
It is also immaterial.

The Court:
I don't see where that is material, Mr. Burr, is the reason I am sustaining it.

Mr. Burr:
All right, sir. That is all I care to ask him.

Mr. Harris:
I have only two questions, I think.

Re-Cross Examination.

(By Mr. Harris):
Q. You were in a conference with Mr. Ball and representatives of the union when the incentive plan was discussed before it went into effect, weren't you?
A. Yes, sir.
Q. And in that discussion your first proposal was to take 150 tons as 100 percent basis for a crew, wasn't it?
A. No, sir.
Q. There never was any discussion—
A. No, sir.
Q. —where 150 tons was the basis?
A. The 150 tons has always been the standard with 80 percent of that as the point on which the incentive was earned.
Q. Wasn't there a time when it was 168 tons?
A. No, sir. It was 150 gross tons, but later it was changed to 168 net tons. The corporation changed everything to net tons.
Q. 150 gross tons is the equivalent of 168 net tons?

A. Yes, sir.

Q. In your investigation and calculation you arrived at 1-1/2 hour per shift as the average traveling time of the men, didn't you?

A. Not at that time. That wasn't brought into calculation at that time at all.

Q. When was it you made the investigation and arrived at 1-1/2 hours as the average traveling time?

A. I didn't make that investigation directly, but I think that was done since this portal to portal came up.

Q. Now, in the discussion with Mr. Ball and the Union men, the company union objected, as well as the Union of Mine, Mill & Smelter Workers, to using 168 net tons as 100 percent basis?

A. No, sir.

Q. Nobody objected on the part of the workers?

A. No, sir.

Mr. Harris:

That is all.

Mr. Burr:

That is all, Mr. Halfpenny.

The Court:

Come down.

(Witness excused.)

The Court:

Next witness.

Mr. Burr:

If Your Honor please, I was trying to keep the introduction of this testimony kind of consecutive as between the different companies, but on account of sickness it is

impossible to do that, so I will have—so I will not have any lost time I will have to go into the Republic Company.

There are several more witnesses for the Tennessee Company—

The Court:

How many more witnesses will you have for the Tennessee Company?

Mr. Burr:

Let me see, Your Honor. Most of them are short. They are witnesses to back up records. I will have Mr. Neal, is about the only witness,—if he gets well enough to testify,—he had to go to the hospital today. I don't know whether he will be able to testify or not. If he is not, I will probably use one of his assistants or mine foremen. That is Wenonah. Your Honor will recall I stopped Wenonah on account of his sickness.

The Court:

Yes, sir. We will take up the Republic Company.

Mr. Burr:

I think the rest of the Tennessee Company's witnesses will be short. They are witnesses on minor matters,—not minor, but small matters.

The Court:

Well, we will take up the Republic Company, then.

Mr. Burr:

Come around, Mr. Thompson.

1796 NORMAN E. THOMPSON, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
What is your name?

The Witness:
Norman E. Thompson.

The Court:
Norman E. Thompson?

The Witness:
Yes, sir.

(By Mr. Burr):

Q. Mr. Thompson, what position do you hold with the Republic Steel Corporation, please, sir?

A. Superintendent of the ore mines, Republic Steel Corporation.

Q. And how long have you been superintendent of the ore mines of the corporation?

A. Five or six years over all the ore mines, and at various times over the different mines.

Q. Suppose we start at the other end of your mining experience. Are you a graduate of any college, or have any technical education?

A. Graduate of Michigan College of Mines.

Q. When did you graduate?

A. 1919.

Q. What degree did you receive?

A. Engineer of Mines and Bachelor of Science.

Q. After leaving college did you take up the profession of mining, you might say?

A. Yes, sir.

Q. Where did you first go to work, and in what capacity?

A. I went to work in the Minnesota Region for the Missaba Syndicate. I worked for them about six months and came to Alabama and worked for the Republic Company—

Q. While you were on the Missaba Range, what company did you work for up there?

A. A company called the Missaba Syndicate. They were pioneering in magnetic iron.

Q. Were they underground mines?

A. No; the work I did was on the surface.

Q. Then you came with the Republic Company?

A. Yes, sir.

Q. When did you come with them?

A. In 1919.

Q. What were those mines, underground or on the surface?

A. They had surface and underground mines. They had Raimund and Spaulding which were underground operations, and the Brown ore operations.

Q. Where were the brown ore operations?

A. Down about Reno.

Q. Where was the Spaulding Mine?

A. About three miles south of Birmingham.

Q. On what mountain?

A. On Red Mountain.

Mr. Harris:

Would you mind talking a little bit louder?

Q. And your Raimund mine?

A. Raimund mine is about a mile and a half from Bessemer on Red Mountain.

Q. How from your Spaulding Mine to your Raimund Mine?

A. About eleven miles.

Q. Is the same vein of ore mined at those two mines?

A. Yes, sir.

Q. Is the same quality of ore mined at those two mines?

A. There is a slight variation of quality.

Q. You served as engineer about how long?

A. About seven years, as I remember.

Q. And then became what, your present position?

A. Then I was sent to the brown ore mines as superintendent of our brown ore operations.

Q. That was down at Greeley?

A. Called Reno at that time.

Q. That was in Tuscaloosa County?

A. Tuscaloosa County.

Q. You stayed there how long?

A. Stayed there a year.

Q. And then went where?

A. Then I was transferred to our Spaulding mine as superintendent of our Spaulding mine, and about a year later I was put in charge of both Spaulding and Raimund mines. About a year later I was transferred to our coal mines and was assistant superintendent of mines in charge of our ore and coal mines.

Q. Coal and ore?

A. Yes, sir.

Q. Then after that?

A. Then after that I went back to the Raimund mines, and from then on I have been in charge of the Red Ore Mines of the Republic.

Q. That includes Raimund and Spaulding?

A. Raimund and Spaulding.

Q. Now has Spaulding been in operation all during this period of time or not?

A. No, sir. Spaulding has been operating intermittently over the period of the last twenty years.

Q. When was it last put in operation again?

A. In September of last year.

Q. In order to use that ore, to put it in operation, has any new process been devised by the company that has made that ore more acceptable or more usable than it was previously?

A. Yes, sir. A mill was built at the Spaulding operations to grind and beneficiate the Spaulding ore to increase the iron content and reduce the insolubles.

Q. As a result of that is that ore more usable than it was before?

A. The process is in a developmental stage, and it is going to develop a large ore body that heretofore has not been merchantable ore.

The Court:

That heretofore has not been or has been merchantable ore?

The Witness:

Has not been merchantable ore.

The Court:

That is still in the experimental stage?

The Witness:

It is still in the experimental stage, but we have reason to believe—

The Court:

You have gone far enough—

The Witness:

We have gone far enough to believe it will be a success.

Q. Are you using that ore now?
A. Yes, sir.
Q. Using it successfully?
A. Yes, sir.
Q. Have you found it is satisfactory for making pig iron?

Mr. Harris:
We don't see the necessity for going into that, if Your Honor please.

A. I will let the blast furnace man answer that.
Q. You don't go into that?
A. I just furnish the ore.
Q. Have you a map of the Spaulding and Raimund mines there?
A. Yes, sir.

Mr. Burr:
We will introduce that map.
Q. Is that the Raimund mine?
A. Yes, sir.

The Clerk:
It will be Republic Number 1.

(Thereupon a map of the Raimund mine of the Republic Steel Corporation was marked Exhibit No. 1.)

The Court:
What mine is that, Mr. Thompson?

The Witness:
This is the Raimund mine.

Q. Now, Mr. Thompson, will you indicate to the Court there—First, prior to May 1, 1941, how many slopes did you have at Raimund that were used?

A. We had—How many prior to 1941?

Q. Well,—

A. We had originally three slopes in the Raimund mines.

Q. Let's start when you first went out there. When you were first acquainted with Raimund, how many slopes—

A. When I first became acquainted with Raimund we were operating Number 3 slope, and operated it for a short period, about three or four months.

Q. Has it been operated since?

A. Has not been operated since.

Q. All right.

A. The Number 2 Main and Number 2 slope,—this is the Number 2 slope right here (indicating on Republic Exhibit No. 1)—were operated until 1931, and after 1931 the Number 2 slope was converted into a man and material slope and used for handling men and material, and all the ore was brought out through Number 1 slope. The ore was brought out from both areas through this slope.

The Court:

Is that indicated by the black line? Where is the ore brought out?

The Witness:

From over here it comes down in this direction—

The Court:

That is what I thought—

The Witness:

—and across here—

The Court:

Yes.

The Witness:

—and out this way.

Q. Did that continue to be the operation substantially up until May 1, 1941?

A. Yes, sir. That is the operation at the present time.

Q. As I understand, you use slope number 2 for hauling the men in? Which slope did you use for that?

A. Since 1931 Number 2 slope has been used—

Q. That is what I mean to say.

A. —to handle men and materials.

Q. But not ore?

A. But not ore.

Q. Number 1 has been used to handle ore?

A. Number 1 has been used to handle ore, and a small amount of material.

Q. Let's take how you handle the ore through number 1 first, and find out how you did that from 1931 on. How was it brought from the stopes to the loading places where they picked it up to haul it out through the slope?

A. The ore is brought from the stopes by electric locomotives to various side tracks where it is picked up by a hoist engine and lowered to another main haulage where it is picked up by locomotives, and from there it is—travels to the storage pocket. The ore is all put in a storage pocket.

Q. What is that storage pocket? Describe that in a general way.

A. The storage pocket is just a large excavation below the main ore body that holds approximately fifteen to eighteen hundred tons of ore, and under which a skip which holds ten tons of ore travels, and the ore is transferred from the storage pocket to the skip and the skip hoisted to the surface.

Q. All right, sir. From the time that ore leaves the stopes or the working places around the stopes, is it handled by what you call production crews or handled by what you call service crews?

A. In some instances it is handled by the production crews to a certain point in their working places where a motor picks that car up, or cars, and from there by the service crews or haulage crews.

Q. Then the service crews haul it from that particular place where the production crews' duty ends in connection with it on down to the storage pocket and out to the surface?

A. Yes, sir.

Q. And that is true of each mine?

A. Yes, sir.

Q. Now, how big did you say your skip was that hauled the ore, that carries the ore out?

A. I said ten tons, but we have been carrying twelve and twelve and a half tons. It was originally designed for a ten-ton skip.

Q. That is the way your ore goes it?

A. Yes, sir.

Q. How does your material go in and out over this period of time?

The material was carried to the Number 2 slope yard by truck, transferred to a material car, lowered to the landing at the bottom of Number 2 slope. From there it is transferred to larries or tram cars and carried by locomotives and hoists to the various sections of the mines.

Q. Is that handled by the service crews, that hauling that you have described?

A. Yes, sir.

Q. You you have an outside supply place for your materials?

A. Yes, sir.

Q. And supplies?

A. Yes, sir.

Q. Where is that located?

A. We have a supply house adjacent to the mine. We have a yard for timbers, ties and heavier material right close to the mouth of the slope.

Q. Now, what sort of skip or car or conveyance is that on which timber and supplies are carried into the mine from the surface?

A That is carried into the mine in what was formerly a skip, with the sides cut down and the back of the skip left in place. The sides are open now.

Q. Now, is that the same skip used for carrying the men in and out of the mine or not?

A. Yes, sir.

Q. Suppose you describe that skip a little more accurately. Tell us what it is made out of, its dimensions.

A. That skip is about twelve feet long, four and a half feet wide, and four and a half feet deep.

Q. Are those the inside dimensions or overall dimensions?

A. Those are the inside dimensions.

On that skip, when we are hauling men, we have bars made out of pipe that are fastened across the skips to form four separate compartments for the men to ride in, stand in, so they don't crowd each other going down this slope. There are about seven or eight men in each compartment, and they lean against this pipe as they are going down the slope. There is a lattice,—a wooden structure built sort of like a lattice in the bottom for them to rest their feet on to keep from slipping.

The Court:

You mean in the bottom of the skip?

The Witness:

On the floor, lattice construction.

The Court:

I thought you said ladder.

Q. Like a lattice nailed down on the floor?

A. Yes, sir.

Q. How is the material handled?

A. The material is carried in the skip. The bars are removed and the lattice removed and the material is carried in the skip.

Q. Do you every carry materials and men at the same time?

A. No, sir, not in the regular man trips.

Q. That is what I am talking about, the trips carrying the men into the working places.

A. No, sir.

Q. When you first went there, Mr. Thompson, do you recall about how far down that slope was driven, or was it driven the entire distance then it is now?

A. The slope was driven the entire distance,—both slopes, in fact, all three slopes were driven the same distance. The mining was out in this location.

Q. You say "about this". Can you indicate on the map to show about where they were mining when you went there?

A. Well,—

Q. Is there any particular designation or any particular heading—

A. Well,—

Q. You have drawn a line.

A. I will draw a line across for about 1910.

Q. There were mining on the right of the line?

A. They were mining on this side of the line.

Q. The right side the way I am looking at the map?

A. Towards the mouth of the slope or portal.

Q. Towards the mouth of the slope or portal?

A. Yes, sir.

Q. Since then how have the workings been advanced?

A. The workings have been advanced as shown on this map up to the present time.

Q. As shown on the map?

A. Yes, sir.

Q. What is the date of this map as to when it was revised?

A. This map was revised, I think—

Q. When was it brought down to date?

A. About the first of this year, I believe.

Q. About the first of this year?

A. Yes, sir.

Q. Now, would you tell the Court what is the length from the mouth of the mine down to the unloading station on that slope that the men travel down?

A. That is from the mouth of Number 2 slope to the skip loading station—

Q. As far as the men travel on the skip; that is the distance I am trying to get first.

A. The skip travels 2100 feet.

Q. Now, then, is that what you call the unloading station at the end of that 2100 feet or not?

A. Yes, sir.

Q. Do all the men going into the mine get off at that point?

A. Yes, sir.

The Court:

They get off at Number 4?

The Witness:

Number 2.

The Court:

Number 2?

The Witness:
Yes, sir.

Q. They have always traveled Number 2?
A. I am talking about prior to May 1st—
Q. That is what we are talking about; we are talking about the period prior to May 1, 1941.
A. Yes, sir.
Q. I know you have made some changes. I will get to those later.
A. Yes, sir.
Q. Has that place got a designation on the map or not, Mr. Thompson?
A. Yes, sir; that is marked with a yellow or orange disc.

The Court:
That shows slope Number 2 at the mouth?

The Witness:
That shows Slope Number 2 at the mouth. The yellow-orange line shows the travel of the skip from the mouth to the bottom.

Q. The men traveling the slope, which you haven't testfied about, is it not towards the top of the map—
A. This way.
Q. —as the map is pointed now?
A. Yes, sir.
Q. All right, sir. After the men get off there, do they proceed to their various places where production is? I am talking about the production crews first, now.
A. Yes, sir.
Q. How do they go there?
A. They proceed on foot.

Q. About—have you got indicated there on that map—as I recall it, I remember seeing it. Yes. Do the little dots show the various working places?

A. Yes, sir.

Q. At that time? These little dots through here and here?

A. Yes, sir.

Q. Wherever they are?

A. Yes, sir.

Q. Now, the green lines on your map show the travel way from the slope the way the men walk, is that right?

A. Yes, sir, those are—these are the green lines.

Q. The blue lines show the man trip; is that it here?

A. This is the blue line here from the point where these two blue dots are to the end of that line where the two dots are.

Q. Do you have an auxiliary method of carrying them across that way after they get off the slope, some of the men that work in these workings?

A. No, sir. We have a man trip that carried the men back to the skip returning at the end of the shift.

Q. That is the blue line between the two dots?

A. Yes, sir.

Q. What is that man trip?

A. That is a trip of cars handled by a locomotive that carried the men from the foot of one of the auxiliary slopes back to the manloading station or approximately to the man loading station.

Q. How do those cars run with reference to the cars that, you might say, bring them down to the unloading station? Is it a connecting line of travel? How do the cars run?

A. This trip runs at 3:30 in the afternoon to connect with the skip that is coming out of the mine to bring the men out.

Q. And what sort of cars do they ride when going down there that way?

A. They are regular mne cars, side seat cars, that will hold eight men, and a trip of cars is anywhere from eight to fifteen cars, depending on the number of men, built expressly for handling men.

Q. Does that man trip handle workers all over the mine or not?

A. That handles such workers as elect to come out on that man trip.

Q. You mean that some of them elect to go another way?

A. Some of them elect to walk out and not wait for the man trip.

Q. All right. How do those men walk out?

A. They walk out the same way they went in, either through this haulage way or this man way.

Q. You mean you can walk out the man way?

A. Walk to the loading station.

Q. Along here on the man way?

A. Yes, sir.

Q. But you say some of them prefer to walk out, either on the man way or this way, rather than to wait for the man trip to come?

A. Yes, sir.

The Court:

How far is the furtherest distance from the loading station?

Mr. Burr:

I am going to get to that, Your Honor.

Q. Now, is that all—have we covered all the transportation by vehicle that you provide the men in the mines with? Is there any other transportation by vehicle other than the man trip down the slope and the man trip that ran from this point over here you have indicated?

A. That is all.

Q. That is all?

A. Yes, sir.

Q. And from this point out, in the event they ride out on the man trip, the men walk to their various working places?

A. They walk from their various working places coming out.

Q. You mean you don't run that man trip going in?

A. No, sir.

Q. The man trip is only run coming out?

A. Yes, sir.

Q. Going in they all walk to their various places?

A. Yes, sir.

Q. Going out they all walk to the point where the man trip starts going out and then they either ride or walk out?

A. They don't come to where the man trip starts if they walk out. They elect to ride out or walk out, and if they walk out they go this way.

Q. As indicated there on the map?

A. Yes, sir.

Q. Now, you have got here indicated on the map that the man trip—that is this one here?

A. Yes, sir.

Q. —travels 4900 feet. Is that the correct distance?

A. Yes, sir.

Q. And you have got the man skip travels 2100 feet; is that right?

A. Yes, sir.

Q. And you have got here the nearest working place is slope M. A. C. What does that mean?

A. Slope M. Air course.

Q. Slope M, air course?

A. Yes, sir.

Q. Can you point that out to us?

A. That is right in here.

Q. And that, according to this, is 2425 feet?

A. Yes, sir.

Q. Now, you have got the longest one is 108 left. Where is that, the longest one?

A. 108 left is out here in this part of the mine.

Q. And the distance from that, as shown by the map, to the man loading station is 7575 feet?

A. That is right.

Q. And the other distances, as shown by the map, are in between those two points, the shortest and the longest?

A. Yes, sir, that is right.

Q. Now, about those—First, we will take that man way. How high is the ceiling in that man way? How high would you say it was, Mr. Thompson?

A. Which man way are you referring to?

Q. The man trip.

A. In the man trip?

Q. Yes, sir, in the man trip?

A. Well, it varies from eight to twelve or fourteen feet in different places.

Q. What is the character of the roof along that man trip?

A. The roof is in excellent condition. Part of it is concreted, and there is a section which has been gunited, which is a cement blown onto the surface.

Q. All right, sir. What sort of condition is the bottom of the—of that particular part of the mine where the men walk that do walk out? Is it smooth or rough? Just describe that to the Court as well as you can?

A. Well, that condition is reasonably good for walking.

Mr. Harris:

We move to exclude that answer, Judge. It is clearly a conclusion and doesn't mean anything one way or the other.

Mr. Burr:
I think—

Mr. Harris:
Reasonably good,—what one man might think was reasonably good another man might think was reasonably bad or terrible.

The Court:
Can you describe it?

The Witness:
The walkway in that part of the mine consists of ties over which the motors run. The ties are filled in between with ore and slate. The tracks are kept clean, continually cleaning up the material that falls off the cars. The manways are smooth. Where any condition occurs that we consider unsafe or not good for walking, we cover that particular place with ashes or slag to prevent slipping. We maintain them in as good condition as we can.

Q. Mr. Thompson, how long have the conditions you have testified about existed there in the mines. Is that the general practice?
A. That is the general practice.
Q. Since you have been there?
A. Yes, sir.
Q. How long has that cementing and the guniting been there?
A. That was put in in 1936, I believe. Prior to that time that particular section of the slope was timbered with square timbers.
Q. I see. How is your slope? What is the ceiling and height of the ceiling? What is the height of the ceiling and the character of the ceiling in the main slope where the skip runs.

A. That is what I have just described, Mr. Burr. That is partly gunited and partly cement.

Q. I thought you were describing the other. Tell me what is the general description and condition of that part where the man trip runs from down below there up to the slope?

A. That is in good condition.

Q. Is that substantially the same as the other; is that cemented or gunited?

A. No, sir.

Q. What sort of roof has that got?

A. That has good roof supported where necessary with wooden timbers or steel timbers.

Q. And how is it for the walking as far as the place where the men walk is concerned?

A. It is the same as that I have just described.

Q. How is the walking from that place to the various working places of the men? How do they go, the same way the tracks run?

A. They travel over the tracks into their working places.

Q. How is that condition as contrasted with what you have told us about the other places?

A. They are not quite as good as the others. They are continually being moved and advanced, and as the permanent track is put in the condition is improved.

Q. I see. Mr. Thompson, have you got a bath house at Republic or not?

A. Yes, sir.

Q. Where is that located at Raimund?

A. That is located between the Number 2 and the Number 1 slopes. It is right where indicated there on the map, midway between the two slopes, and the slopes are about 2600 feet—

Q. How long has that bath house been there, about how long?

A. That bath house, as I recall, was built in 1915.

Q. Does Republic—Did you make a charge for the use of the bath house or not?

A. Yes, sir.

Q. What charge is made out there for the use of the bath house?

A. Fifty cents per month.

Q. How long has that been in existence, that charge?

A. It has been in existence since I remember.

Q. All the time—

A. Yes, sir.

Q. Since you have been there?

A. Yes, sir.

Q. What is the approximate degree of that slope that the men ride down in?

A. This main slope the men ride in—the slope is on varying degrees from 15 degrees to fifty degrees.

Q. Could you give us what the vertical depth of the cover is at that mine?

A. Approximately 1000 feet. It varies in different parts of the mine.

Q. And what is the average thickness of the workable seam of ore at the Raimund mine?

A. About six and a half feet.

Q. What sort of method of mining do you say you use out there?

A. We use what is properly termed the room and pillar method of mining. The headings are driven from the main haulage ways at stated intervals. Where mechanical mining is feasible, these headings are driven further apart so as to allow for stopes between the headings which are later mined out by mechanical means. If mechanical means are not going to be followed, the headings are driven closer together, and the ore between the headings is mined out through upsets.

Q. Do you call that a modified room and pillar plan?

A. Yes, sir.

Q. Is that the designation for it?

A. Yes, sir.

Q. You referred to mechanical means; what do you mean by that?

A. Scraper hoists.

Q. That is what has been referred to by the other witnesses as mechanical loaders?

A. Yes, sir.

Q. When did you install mechanical loaders first, what year?

A. The first mechanical loader went into Raimund first, I think, in 1930.

Q. Was it all mechanical loading after you got them installed, or do you have the old style loading?

A. There is very little mechanical loading at Raimund Mines.

Q. What type of loading is it, then?

A. Practically all hand—shovel loading.

Q. About how many places did you use the mechanical loader in over this period of time?

A. Oh, from four to five places at a time.

Q. And in how many working places is the shovel and hand system in vogue over this period of time?

A. 50 to 65 to 70 working places.

Q. You have a total number of working places, say, normally, from 1931 down to May 1, 1941, of about how many places?

A. Well, say from fifty to sixty places.

Q. Fifty to sixty places?

A. Yes, sir.

Q. What is your system there of operating as far as whether you are on the tonnage basis or not at the present time? Not at the present time,—I will take that up later, but under your system, that existed there all the period of time that you have been there?

A. Since '31 we have operated on what is known as the tonnage or contract basis, and we—

Q. Will you tell the Court what that basis is so we can understand it?

A. Each member of the crew participates in the earnings of that particular place upon a definite tonnage rate. There is no—there is a rate set up for each type of worker in that place, and the tonnage that he might load at that rate is the basis of his earnings.

Q. Now, is or is not that tonnage rate calculated and paid on the basis of a certain number of hours a day or not?

Mr. Harris:

We object to that, if the Court pleases. If they are paid on a flat tonnage rate there couldn't be any hour basis.

Mr. Burr:

I don't see why there couldn't be if—

The Court:

Let the witness state.

Mr. Burr:

Yes, sir.

A. The tonnage rate was set up based on our past experience on a ten hour day, and rates were fixed from that experience.

Q. All right. Now, when you went to a nine-hour day, were those rates adjusted or not?

A. Yes, sir. When we first went to a nine-hour day the rates were adjusted, and then we went to an eight hour day and they were again adjusted.

Q. And they were adjusted on the basis of eight hours a day?

A. Yes, sir.

Mr. Harris:
We object to leading him.

The Court:
Yes.

Mr. Burr:
I could have asked four questions, but I got the testimony in by one.

The Court:
Well,—

Mr. Burr:
Let's go back, then.

Q. Were they adjusted on the basis of eight or six when they were on ten?
A. They were adjusted from the basis of ten hours to nine-hour day.
Q. When you changed from nine to eight, how were they adjusted?
A. They were adjusted on the basis of the eight-hour day.
Q. Do you recall when you were on the ten-hour basis?
A. Until 1933.
Q. Then what basis did you go on?
A. We went on a nine-hour basis for about thirty days, and then to an eight-hour day.
Q. You went on the basis of nine hours for about thirty days?
A. Yes, sir.
Q. And been on eight hours ever since?
A. Yes, sir.
Q. Until May 1, 1941?
A. Yes, sir.

Q. That tonnage basis you have described, did or not that apply to the service men?

A. No, sir.

Q. Then on what basis were the service men—their time computed and they paid?

A. They were paid on an hourly basis for eight or nine or ten hours.

Q. At the time of the eight or nine or ten hours going in effect on the tonnage rate, is that the same time it went in effect on the service men?

A. I don't believe I understand.

The Court:

You mean from ten to nine and nine to eight?

Mr. Burr:

Yes, sir.

Q. When you changed from ten to nine hours, was the change made for both producing and service crews at the same time?

A. Yes, sir.

Q. And when you changed from nine to eight was it made for both the producing and service crews at the same time?

A. Yes, sir.

Q. How many men worked in your production crews over there, Mr. Thompson, during this time I am asking you about?

A. About 200—

Q. I mean in each crew?

A. Each crew? The crews would vary from three to six,—as high as eight men sometimes.

Q. Let's take an eight man crew. What composes an eight man crew?

A. A drill man or contractor, and as many muckers as he could break ore for, from two to four, six or eight.

Q. Let me see if I understand you. The contractor and drill man—

A. The contractors are drill men. That is the same.

Q. The same occupation rate?

A. Yes, sir.

Q. And then as many muckers, as you call them, as he would need—

A. As many muckers as he could break ore for.

Q. In that particular place?

A. Yes, sir.

The Court:

How do they break that ore?

The Witness:

They drill it with air drills—

The Court:

Of course, they shoot it down?

The Witness:

—and blast it down with dynamite.

The Court:

Then, when it is down, it is in large pieces?

The Witness:

It is broken up with hammers and some pieces have to be drilled again and shot with a small amount of powder to break them up.

Q. What proportion, Mr. Thompson, of the total underground employees makes up your service crews?

A. About 46 percent.

Q. Are service, and the balance productive crews, is that right?

A. Yes, sir.

Q. Now, I want to get you, please, sir, to take a man on your production crew, first, and let's see what he does and where he goes and how he goes during the work period or work day, the eight hour day that existed before May 1, 1941. I assume he goes to the bath house first; is that right?

A. He starts at the bath house, those that use the bath house—

Q. Now, right there, do all of them use it or not?

A. Not all of them, no, sir, but practically all, though.

Q. Are they required to use it—

A. No, sir.

Q. —and pay this fifty cent charge?

A. No, sir.

Q. That is optional with them?

A. Optional with them.

Q. Those that do not use it, do you know where they change clothes or not?

A. Now, I do not, but I assume they change their clothes at home.

Q. Change their clothes at home?

A. Yes, sir.

Q. Do a great many of the employees live in close proximity to the mine, or not?

A. Yes, sir.

Q. What would you say would be the average distance of the homes of the employees from the entrance to the mine?

Mr. Harris:

We object to that; immaterial.

The Court:

Overruled.

A. It would merely be a guess on my part.

Mr. Harris:

We object to him guessing.

Q. I don't want you to guess if you haven't any idea.

A. I don't know how far it is.

Q. After they change clothes at the bath house or at home, what is the next thing this miner does?

A. The miner changes clothes, and then goes from the bath house to Number 2 slope where he checks—hands in his check number and gets his battery lamp and waits for the skip to go into the mine.

Q. Now, to get back to this check number, what is that check number at your mine?

A. The check number is an identification that he hands in to the tally man at the beginning of his shift. That is hung on the board in the designated place where he is working that day.

Q. Who handles that board and the checks at your place?

A. The tally man handles the board with the help of the mine foreman.

Q. Does the tally man and the mine foreman check the numbers that are handed in to ascertain whether or not there are any vacancies in the crews that go into the mine—

A. Well,—

Q. —and if so, how is that done?

A. That becomes evident after the men have checked in. The nails that these checks are hung on all have designations as to working places or working crews, and it becomes perfectly evident if there is a man or two vacant or absent on that crew, and if there is such an absence the foreman generally takes a man out of another section crew or the service crew to operate those vacancies wherever he can.

Q. How does he do that? Does he do it at the top or at the bottom or by messages or by phone or how?

A. He does that both ways.

Q. What?

A. He does that both ways,—at the top if he knows before he leaves the top, or he phones to the bottom of the mine and has the man sent to different parts of the mine before they go to the places where they were first supposed to go.

Q. You spoke of lamps. You don't use carbide lights over there?

A. No, sir. Electric lamps.

Q. What is this electric lamp?

A. It is a battery a man carries either in his pocket or on his belt. It is made to carry a battery lamp with a cord that runs from the battery to a headpiece that is fastened to the cap on his head.

Q. Does the man furnish that lamp or does the company furnish it?

A. The company furnishes the lamp.

Q. Does he get that lamp when he deposits his check or where does he get it?

A. He gets a lamp at a window next to the window where he deposits his check.

Q. He deposits his check at one window and gets his lamp at another window?

A. Yes, sir.

Q. Adjoining window?

A. Yes, sir.

Q. How long does it take to deposit his check and get his lamp?

A. Just the length of time it takes to walk up and drop his check and walk over and pick up a lamp. The lamps are sitting on a—

Q. Counter?

A. —counter by the lamp man, and they become so accustomed to their lamp they walk up and get their lamp without even calling for it.

Q. How long have you been using the electric lamps?
A. Since 1936.
Q. Previous to that, what did you use?
A. Carbide.
Q. Where did he get his carbide?
A. The men bought the carbide themselves anywhere they cared to.
Q. You didn't have a supply at the mine?
A. No, sir.
Q. The men bought it anywhere they pleased?
A. Anywhere they cared to.
Q. I believe you have described the skip before that they ride down in the mine in?
A. Yes, sir.
Q. And how many do you take down in a skip load?
A. We carry about thirty men at a trip.
Q. At what time prior to May 1, 1941, did the skips begin to run at Raimund, Mr. Thompson?
A. About 5:30 in the morning.
Q. And when did the last skip run?
A. At 6:30, unless there were some stragglers came along and they ran a special trip for them.
Q. If they were men late you ran a special trip for them?
A. In a number of instances we have done that.
Q. Was there any schedule for the men as to what trip they should take or not?
A. At that time, you mean?
Q. That is what I am talking about.
A. No, sir.
Q. They could catch any skip they pleased that ran during that period of time?
A. Yes, sir.
Q. At what time were they getting to their places where their work began?

A. In the majority of cases, at seven o'clock. In some instances we had the service crews start earlier and they quit within the eight hours.

Q. What were the instances that the service crews started earlier and what service crews were they that started early?

A. The motormen and helpers and haulage crews and some of the timber and track crews.

Q. What was the reason for starting them first?

A. The reason was to get the haulage started before the miners were in their places so they could speed up the transfer of cars.

Q. Those usually went down at 6:30—went to work at 6:30?

A. Yes, sir.

Q. What time did the work day end?

A. At 2:30.

Q. When?

A. 2:30.

Q. The others started at 7 and what time did the work day end?

A. At 3 o'clock.

Q. Did you, at Raimund, have any time out for lunch?

A. There was no time for lunch.

Q. The men took their lunch time on the company's time?

A. Yes, sir.

Q. Is that the way it was?

A. Yes, sir.

Q. During the working hours?

A. Yes, sir.

Q. All right, sir. Now, when the men got to their working places,—I am still talking about the production crews,—I think you operated maybe a little different from the others. You had two kinds of operations?

A. Yes, sir.

Q. The pick and shovel kind and the mechanical kind?

A. Yes, sir.

Q. Let's take the pick and shovel crew and see what they did when they got up to their places of work.

A. A man got to his place of work and he examined his place to make it safe, like quarrying—timbering or quarrying, cleaned off his track, prepared the place to set up his drill and set his drill up; the muckers started loading and the drill man started drilling.

Q. Would they—would this crew begin loading ore that they had shot down or ore that had been shot down by the preceding crew?

A. In some instances they would load the ore they shot down the day before, and in other instances they would shoot down the ore—load the ore that was shot down on the night shift before.

Q. That varied—

A. Yes, sir.

Q. —In your mines?

A. Yes, sir.

Q. In your crews you didn't have but how many that operated the drill?

A. One man.

Q. One man that operated the drill?

A. Yes, sir.

Q. Explain to the Court how that drill was operated for that hand loading place. How many holes did he have to drill, the depth of them, and where did he drill them in a typical day's operation?

A. In a typical day's operation a man would drill from four to eight ten foot holes, maybe more if his place was in such condition he could drill them.

Q. How did he place those holes in this method of drilling?

A. They were—

Q. Can you show us better on the blackboard?

A. I can show you on the blackboard.

Mr. Burr:

Give us a piece of chalk, and use the bottom part of the board there.

The Court:

We will take a few minutes recess.

Mr. Burr:

Thank you, sir.

(Thereupon proceedings were in recess from 10:40 A. M., to 10:55 A. M., when proceedings were resumed as follows:)

The Court:

All right; let's proceed.

(By Mr. Burr):

Q. Now, Mr. Thompson, you were indicating at the recess,—trying to show us how the shooting is done in these hand loading places. If you will show that—

A. Say this is a typical heading here. It is driven about 25 to 30 feet wide or wider if we think the top will stand it. This is the actual working face at this point.

Q. The track comes in from where your body is?

A. The track comes in this way (indicating).

Q. The haulage way is back here?

A. Yes, sir.

Q. Runs this way?

A. Not necessarily. The man does all his work up at this part of the mine. The man comes in and he first sees his place is safe to work in. He quarries down his rock, timbers if necessary. The muckers clean off the track. The drill man prepares the place for his tripod and sets up his drill and proceeds to drill.

There are a thousand ways to drill. The object is to break the most ore with the least amount of powder. For

instance, the working place might be in this shape when he came into the working place, and he might put two holes in this direction and two here and two here, and if this rib hasn't been squared up, he would put maybe a hole here to square that rib up.

At the end of the shift he puts dynamite in those holes and blasts this ore out.

Q. That is the material he loads—

A. That crew either loads it on the next shift, or the following crew will load it. This man on the day shift will load the mateial the man on the night shift has blasted down, and the man on the night shift will load the ore the man on the day shift has blasted down as a general rule.

Q. The driller determines where to place his shots and how to place them?

A. Yes, sir, he uses his own judgment. If he requires any assistance, the mine foreman will help him to place his holes to better advantage.

Q. That is the way the hand loading is done?

A. Yes, sir.

Q. Do they load with a shovel into the cars?

A. Shovel or by hand.

Q. Shovel or by hand?

A. Large lumps they load by hand, and the smaller pieces with a shovel.

Q. The mechanical drag places, in that place they use the drag attached to a skidder block, do they?

A. Yes, sir, a double drum hoist with a rope attached to each end of the scrape, one rope on each drum, and that scraper travels back and forth in this stope over a ramp and loads the material into the tram cars.

Q. All right, sir. Let's turn next to the equipment that is used in these places:

Is there a different type of equipment used in the hand loading or shovel loading places as contrasted with the mechanical loading places?

A. There is more equipment used in the mechanical loading places first.

Q. Well, let's take the mechanical loading places first, although you have fewer of those. Could you give us a list of the material that stays in that place, we might say permanently, until it wears out or needs repairing?

A. The material in a mechanical loading place would consist of a double drum scraper hoist, the scraper rope,—

Q. The scraper is the loader?

A. That is the bucket that does the loading.

Q. All right. What else?

A. The ropes, skidder block, hanger and wedges and clamps or clevises to hold the skidder block—

Q. Now, for the present I want the heavy material; the scraper hoist, the scraper, the skidder block, the ropes used on the scraper—

A. The ramp material.

Q. What is the ramp?

A. The ramp is the platform over which the scraper travels. It is elevated at one end above the other, and the other end on the footwall, and they pull the scraper over this ramp to move the ore into the cars.

Q. What about the drill? Do they use the tripod drill?

A. Tripod and column.

Q. What does the heavy drill weigh?

A. About 150 pounds.

Q. What do you use in the way of hose in connection with the drill?

A. That is two pieces of hose about fifty feet long, one-inch air hose and water hose, half inch hose.

Q. I believe you mentioned a skidder block. What are they?

A. They are simply a pulley the rope passes through to control the travel of the bucket.

Q. In that type heading do they use a jackhammer or not?

A. They use the jackhammer to drill the holes for the skidder block and hanger.

Q. What about the drill steel in the large drills, not the jackhammer?

A. We use an inch and a quarter hollow drill steel.

Q. Is that detachable?

A. We have put in detachable bits at the rate of about one place per week.

Q. How long have you been substituting the detachable drills for the—

A. About a year,—a little over a year.

Q. About how many places did you have equipped with the detachable drill bits on May 1, 1941?

A. About 90 percent of the places.

Q. Does that constitute the heavy material used with a typical machine loading crew you have given?

A. Yes, sir.

Q. Now, in what respect does the hand loading crew differ from that mechanical loading crew?

A. The drill and tripod is about the only heavy material they have.

Q. What other materials do they have?

A. They have sledges, picks, hammers, shovels, small hand tools, hose, quarry bars.

Q. Do they use the jackhammer drill or not? I don't guess they do.

A. No, sir.

Q. They don't use the jackhammer, the loader, the ramp,—

A. No, sir.

Q. They don't use the skidder block or jackhammer or drill steel or hangers?

A. They use the drill steel.

Q. I am asking this question again because I am not sure I got it. How many places are the mechanical places, and how many the other?

A. About four to six mechanical.

Q. And the balance hand loading?

A. The balance are hand loading.

Q. Let's go back again to the mechanical loading crews. Do they also, the loading part of the mechanical loading crew, do they use in your place C-hooks or not?

A. If you mean—I don't know what you are talking about.

Q. What do you use to fasten the skidder block to the hanger?

A. We use two straps of iron fastened together with two bolts.

Q. What do you call that?

A. A clamp or clevis.

Q. What would they weigh?

A. About three pounds.

Q. You have heard some of the witnesses from the other companies testify about C-hooks?

A. Yes, sir.

Q. Is that clevis used in the place of the C-hook in your mine?

A. Yes, sir.

Q. Does the mechanical loading crew have a jackhammer?

A. Yes, sir.

Q. What is that?

A. That is a small drill which wouldn't weigh over 30 or 40 pounds.

Mr. Harris:

How many?

The Witness:

Thirty or forty pounds.

Q. Thirty or forty pounds?

A. Yes, sir.

Q. Do they use wedges?

A. Yes, sir.

Q. What is the size of the wedges in your place?

A. A tapering piece of steel possitly eight or nine inches long, maybe a foot long, and wouldn't weigh more than half a pound, I guess.

Q. How much do the hangers that you use down there in Raimund weigh?

A. Oh, they wouldn't weight more than six or eight pounds.

Q. Now, turning again to your hand and shovel crews, do they use clevises?

A. No, sir.

Q. Do they use the jackhammer?

A. No, sir.

Q. Do they use the wedges?

A. No, sir.

Q. Do they use the hangers?

A. No, sir.

Q. Or the hanger steel? They don't use the hanger steel—I don't mean hanger steel, but the hammer steel,—jackhammer steel?

A. No, sir.

Q. They don't use that at all?

A. No, sir.

Q. The rest of the material they use consists of hammers and picks and shovels and such as that?

A. Yes, sir.

Q. Mr. Thompson, referring first to what we have classified as the heavy and more substantial materials that stay in the place the longest, in the machine loading places, that is the hoist and scraper and ramp and drills and hangers and skidder block, where is that material gotten first, from the surface?

A. In the supply house at first, or if it has been repaired, in the blacksmith shop.

Q. How does that material, from the supply house or blacksmith shop, get in the mine?

A. Carried from the supply house or the blacksmith shop to the mouth of the mine by truck, and from there it is loaded into the skip by the surface crew and carried to the bottom of Number 2 slope by a haulage crew and transferred to larries or flat cars and carried out to the various working places or to an underground tool house.

Q. All right, sir. Now, in carrying that to the working places, that material, is it handled at any time by the production crew or not?

A. Not if it is carried to the working places by the service crews.

Q. I see. Well, who—what crew carries the scraper loader, scraper and drag hoist and the materials used for the ramp and the drill and tripod and skidder block,—what crew carried that to the working place?

A. The service crew.

Q. Do the service crews always carry that to the working places?

A. Repeat that last, please, sir.

Q. The scrape, the hoist, the ropes used in the scraper, the ramp material, the tripod, the hose and skidder block—

A. In the majority of cases,—practically all cases, those materials are carried to the working places by the service crews.

Q. Now, the items that go to the working places, the clevises and the jackhammers and wedges and hangers and detachable bits,—since you have been using detachable bits, where are those materials carried from from the surface?

A. Those materials are carried usually to the underground tool house.

Q. Are they carried by the same crews you mentioned before that carry the heavy materials?

A. Yes, sir.

Q. The surface crew carries them to the mouth of the mine and the haulage crew down to the tool house?

A. Yes, sir.

Q. Where is that tool house?

A. I can show you on the map. The tool house is located at this point right here, which is a little better than half way from the mouth of the slope to the furtherest working place.

Q. Is there anyody in charge of that tool house?

A. We have a man in there on each shift, a tool house man.

Q. Well, now, how is that material taken from the tool house, as a usual thing, to the working places?

A. The material is carried to the working places either by service crews, or, if a man needs a particular piece of equipment during his working hours, he goes to the tool house and gets it.

Q. During work hours he comes back and gets it?

A. Yes, sir.

Q. He does do that?

A. Yes, sir.

Q. Has he, during this period of time that I have inquired about, ever picked up that particular type of material on the way to his work at the tool house?

Mr. Harris:

We object; he couldn't know.

The Court:

If he knows.

Mr. Burr.

Yes, sir.

A. Yes, sir, he picks up oil, various small tools; he might pick up a wrench or wedge; he picks up his detachable bits at the steel shop as he goes in.

Q. Now, is that the same character of tools as you have testified about that he can come back to the tool house during his working hours and get?

A. Yes, sir.

Q. And he does do that?

A. Yes, sir.

Q. Is it his option or a requirement of the company that he pick it up on the way going in to those working places?

Mr. Harris:

We object, if the Court please.

The Court:

Overruled.

A. That is optional with the men.

Q. Of course, by doing it that way—that is apparent. There is no use asking the question.

Now, I haven't asked you about the hand crews. You said they had picks and shovels and tools of that character not used by the mechanical loading crews. How are those picks and shovels supplied to the working places?

A. They are carried to the tool house and the man from the service crew or production crew goes to the tool house and gets them.

Q. They are handled just like the other tools you mentioned?

A. Yes, sir.

Q. The light tools of the mechanical loading crew?

A. Yes, sir.

Q. Now, Mr. Thompson, I want to ask you about your service crews as to how their pay prior to May 1, 1941, was computed; that is, the crowd that is not on a tonnage basis. How was their wage set, by the hour or by the day or how?

A. Their wage was set by the hour.

Q. I want to ask you both as to the service crews and the production crews, since you have been connected with the company and had knowledge of it, up until May 1, 1941, was the pay or the wage ever computed,—the pay of the men ever computed or paid on any basis other than the basis you have described, face to face or working place to working place?

A. Not to my knowledge.

Q. Has there ever been any payment for traveling time to either one of those crews in going to and from their working places?

A. No, sir.

Q. I don't know whether I asked you where the working place of the service crews is. Where does their day's work start?

Mr. Harris:

We object to that question in that form. He can ask him where they go and what they do.

Q. Where does the computation of their day's wage start? I will put it that way. That is the same thing.

The Court:

Yes.

Q. In the case of the haulage crews, their work starts at the motor.

Mr. Harris:

We move to exclude that answer. The question was when the computation began. It is a question for the Court when the work begins.

The Court:

Where do they begin their work?

Q. Yes, sir. Where do they begin their work, and when?

Mr. Harris:

I object to that. That is the one I objected to. The Court sustained the objection and then Mr. Burr asked where did the computation start, and then he answered not where the computation started, but where the work began. It is what I objected to.

Mr. Burr:

I think the question is clearly admissible.

The Court:

I think it is admissible where the work began and when. I overrule that and give you an exception.

Mr. Harris:

We except.

A. In the case of the haulage crews the day's work begins at the motor of the particular crew.

Q. What time does the work start?

A. 8:30.

Q. When does their work end?

A. 2:30.

Q. The next crews, service crews?

A. The timber and track crews, their work usually starts at 7 o'clock at a tool house in their particular section of the mine.

Q. And where and when did their work end?

A. Their work ended at 3 o'clock at the same point.

Q. Any other crew that varied from the two designations of the service crews?

A. Well, we did have and have got a crew that handles drill steel that works entirely different hours, between

shifts, who carried the steel back and forth from the shop—

Q. Is that what you call a split crew—split shift?

A. No, it is not a split shift. It is a shift that comes in and works between the regular shift for four hours, and finishes out their work with four hours with the regular shift.

Q. That is what I mean; they work four hours with one shift, is that what you mean?

A. Not in the sense I understand a split shift. They work continuously for eight hours.

Q. Well, it is divided between two shifts; maybe that will define it definitely.

A. Yes.

Q. What time is the shooting time in your working places at Raimund over this period of time?

A. Three o'clock.

Q. And what time does the first skip go out from the loading place down there?

A. Approximately 2:30.

Q. Would all the members of the production crew stay in the working place until the shooting took place, or did they leave before the shooting took place?

A. Some of them left before the shooting took place.

Q. Where would they go when they left?

A. They went to the skip landing.

Q. In going out, how would they decide who would go out on what skip, or how was that handled?

A. The scheduling of that was handled by the first man that come there was the first man out with a few exceptions to it.

Q. What part of the production crew would leave before the shooting and who would be left there to do the shooting?

A. The contractor or drill man remained, and he usually kept one man with him to help him shoot.

Q. Now, Mr. Thompson, I want to ask you next if you had charge of or have been present at the various relationship negotiations that the Republic Company has had with its men in reference to working conditions and wages and things of that sort?

A. Yes, sir.

Q. Could you tell us about when the local of the Smelters Union was organized at Raimund, about when that was?

A. Sometime in 1933.

Q. When did you say?

A. Sometime in 1933, as I recall.

Q. Now, has that organization remained there ever since?

A. Yes, sir.

Q. Since that time have committees of that organization met with you from time to time, and other officers of the company, in connection with their grievances and complaints—

A. Yes, sir.

Q. —and proposed contracts and things of that sort?

A. Yes, sir.

Q. Have you had regular times for those meetings?

A. No, sir, we had no regular time. There were meetings called at the request of the committee.

Q. About how often, would you say, over that period of time, have you met with that committee over a month?

A. At least once a month, sometimes oftener, depending on the amount of negotiations we had.

Q. When you had those meetings, who would usually attend them representing the company?

A. Usually myself and some other representatives for the management, sometimes a stenographer and the committee, and sometimes some officers of the Smelters Union.

Q. About how many constituted the committee of the Smelters, if you recall?

A. Well, we would have meetings with anywhere from five to seven or eight members.

Mr. Burr:
Will you mark this Exhibit for me, please, sir?

The Clerk:
Republic's Exhibit No. 2.

(Thereupon a document dated September 30, 1933, and signed C. C. Burchell, Chairman, and bearing the seal of the International Union of Mine, Mill & Smelter Workers, Bessemer District, Smelters Council, Bessemer, Alabama, was marked Republic Exhibit No. 2.)

Q. I am showing you, Mr. Thompson, Republic Exhibit No. 2, and I will ask you to please state if that is a correct copy of a paper that was handed to you at one of these meetings on September 30, 1933, signed by C. C. Burchell, chairman, with the seal of the I. U. M. M. & S. W., Bessemer District, Smelters Council, Bessemer, Alabama,—

Mr. Harris:
Have you the original?

Mr. Burr:
The original was turned over to the Labor Board hearing. I can testify to that fact. This is an exact copy.

The Court:
It is an exact copy?

Mr. Burr:
Yes, sir, I know it is.

Mr. Harris:
We have the other.

Mr. Burr:
Yes, sir, you have the other and can check it.

Mr. Harris:
Judge, in making those statements, we don't waive any question of materiality.

Mr. Burr:
I understand.

The Court:
That is true.

Q. Was that the first time any demands in writing were ever made upon you by this organization?
A. Yes, sir.
Q. I notice that among the demands—all together there seem to be thirteen demands or requests,
A. Yes, sir.
Q. And Number 6 is that "the men enter the mine on their own time and come out of the mine on the company time."
Did you have a meeting with the committee and discuss all these demands?
A. Yes, sir.
Q. Were some of them refused and some granted, or do you recall—I don't think that makes any difference.

The Court:
No.

Mr. Burr:
We will not go into that.

Q. What I want to ask you is this, though, at that hearing and that meeting did they ever bring up the number 6 demand, that the men enter the mine on their own time

and come out on the company's time; did they ever bring that up at the meeting that considered these thirteen demands?

A. Not that I recall.

Q. You don't recall that being brought up or discussed at all?

A. No.

Q. Now, I show you, next, please, sir,—Well, before I show you the next paper, that was presented to you on September 30, 1933?

A. Yes, sir.

Q. What happened as between the men and the company following the presentation of the Exhibit Number 2 that has just been shown you,—was there any cessation of work or strike or anything of that sort?

A. Between that and when?

Q. Following the presentation of this demand.

A. There was a strike called following those demands in December of 1933.

Q. In December of 1933?

A. Yes, sir.

Q. Do you know how long that strike lasted?

A. It lasted into January of the following year. I think it was about the 21st of January.

Q. During that strike, state whether or not this union filed any complaint of any kind with any government board.

A. They filed a complaint with the—with what, I believe, was the Regional Board in Atlanta.

Q. Was that the board, to identify it more closely, presided over by Mr. Marion Smith as chairman?

A. Yes, sir.

Q. Was there a hearing before that board on the demands and complaints?

A. Yes, sir, there was a hearing.

Q. I will ask you to state whether or not at that hearing they presented any complaint or demand with refer-

ence to going in on their own time or coming out on the company's time?

A. Not that I recall.

Mr. Harris:

The demand would be—the demand or complaint was in writing, and the writing would be the best evidence.

Mr. Burr:

I am asking if it was presented at the hearing.

Mr. Harris:

I think they had stenog aphic notes.

Mr. Burns:

If he knows—

The Court:

If he knows, I think it would be admissible.

A. I do not recall.

Q. You don't recall it being brought up at all?

A. No, sir.

Q. Now, did they go back to work after that hearing before the Regional Labor Board?

A. Yes, sir.

Mr. Burr:

Will you mark this one next, please, sir?

The Clerk:

It will be Republic Exhibit Number 3.

Mr. Burr:

Yes, sir.

(Thereupon a document headed Atlanta, Georgia, January 15, 1934, and addressed to Mr. Marion Smith, Chairman, Regional Labor Board, Hurt Building, Atlanta, Georgia, and signed, Very truly yours, ..., Attorney for Republic Steel Corporation, was marked Republic Exhibit No. 3.)

Mr. Burr:

This likewise,—the original of this was deposited with Mr. Smith's board, and, of course, is not in the jurisdiction of the Court, but I know this to be an exact copy, so, of course, Mr. Thompson can identify it.

Mr. Harris:

This one he is asking about will be Exhibit Number 3, and, of course, we have objections to all of them, but merely to call it to the attention of the Court, we think that would be clearly a self serving declaration in addition to the grounds we have heretofore called to the attention of the Court.

The Court:

Who is this directed to?

Mr. Burr:

This is a letter directed to the Chairman of the Board, by the company, stating the terms of the settlement, and I expect to prove under this agreement they went back to work.

Mr. Harris:

That was written by you, I suppose?

Mr. Burr:

Yes, sir, it was written by me and accepted by the Union and they went back to work.

Mr. Harris:
We object to that statement.

Mr. Burr:
It will not be denied, because there is not any question about it.

The Court:
The objection will be overruled.

What is the date of it?

Mr. Burr:
January 15, 1934.

Q. I show you Republic Exhibit Number 3, and I will ask you to state whether or not that is a correct copy of a letter dated January 15, 1934, addressed to Mr. Marion Smith, Chairman of the Regional Labor Board, and state whether or not—

Mr. Harris:
Judge, he didn't write the letter. How does he know it was a correct copy?

Q. Is that the copy returned back to you under which the men resumed work?

Mr. Harris:
We object to that statement, "under which the men resumed work".

Q. Well, after you received this letter, did the men go back to work?

Mr. Harris:
The same objection.

A. Yes, sir.

Q. And did they go back to work on the same eight-hour day they had worked previously on?

A. Yes, sir.

Q. And did they accept the terms of this letter with your knowledge?

Mr. Harris:

I didn't hear the question.

Mr. Burr:

Did they accept the terms of this letter?

Mr. Harris:

We object to that.

Mr. Burr:

He knows it.

Mr. Harris:

We object to that. He can't say whether they accepted it or not.

The Court:

I sustain the objection.

Mr. Burr:

If the Court please, I think it is plain that it is admissible, but here is what I want: I don't see any use of having the facts like they were—

The Court:

He can testify what they did.

Mr. Burr:

Yes, sir, but he knows the Union received a copy of this letter and agreed to that.

The Court:
Does he know that?

Mr. Burr:
I think he does.

Q. Do you know or not—

Mr. Harris:
It is a written communication—

The Court:
It is a written communication to an officer, a third party?

Mr. Burr:
Yes, sir.

The Court:
Mr. Smith up here?

Mr. Burr:
That is right.

Mr. Harris:
If they have any letter from the union here agreeing to that letter, let them produce it.

Mr. Burr:
It doesn't have to be in writing. If it is admissible, it is admissible verbally.

Mr. Harris:
He says, "Did the Union accept that?"

The Court:
I am going to sustain the objection, but I am going to let him show what was done after the receipt of the letter.

Q. Did the officers of the Union receive a copy of that letter?

A. I am not sure about them receiving a copy, but I do know they went back to work after we received the letter.

Mr. Burr:

Will you mark this one, please?

The Clerk:

Be Republic Exhibit Number 4.

(Thereupon a document dated Bessemer, Alabama, March 13, 1934, addressed to Republic Steel Corporation, Raimund Mine Division, and signed Byrd H. Barksdale, Chester Knowles, Gus Gatewood, J. A. Lipscomb, V. C. Finch, C. Q. Burchell, and M. C. Anderson, was marked Republic Exhibit No. 4.)

Q. Now, Mr. Thompson, I show you next Republic Exhibit Number 4, dated March 13, 1934, signed by Byrd H. Barksdale, Chester Knowles, Gus Gatewood, J. A. Lipscomb, V. C. Finch, C. Q. Burchell and M. C. Anderson.

First, who are those that signed that; were they members of the Smelters Union and their committee or not?

A. Yes, sir.

Q. Was that J. A. Lipscomb by friend Jim over here?

A. Yes, sir.

Q. He was attorney at that time, I believe, for the union?

A. Yes, sir.

Q. Now, was this the next proposed contract or written request or demand of any kind you received from the Smelters Union in connection with working conditions at the Raimund plant, dated March 13, 1934?

A. I believe—we received on March 13th the proposed contract.

Q. I want you to read it and see if that is the one.

Mr. Harris:

Note that their names bear no official designation, if I may interrupt.

Mr. Burr:

Yes, sir.

Mr. Harris:

And also, in order that there may be no confusion, it is my understanding Mr. Brodie has also reserved the right to object, so it will not be necessary for him to repeat the objection.

Mr. Burr:

Yes, sir.

The Court:

That was the understanding.

Mr. Harris:

That was my understanding, but there seemed to be some question.

The Court:

Oh, no.

Mr. Harris:

I didn't mean on Your Honor's part.

The Court:

No; we had that understanding.

Q. Is that the one—You haven't finished checking it yet?

A. Yes, sir, that is a copy of it.

Q. All right, sir. Did you have a discussion with this committee of the Union that presented this with reference to these demands?

A. Yes, sir.

Q. In that discussion was there any further presentation by verbal statement or otherwise, of the tenth ground of this list of requests or demands?

It reads as follows:

"That the men not be required to enter and leave their place of work on their own time."

A. No, sir, there was no discussion about that.

Mr. Smith:

What exhibit is that, Borden?

Mr. Burr:

Exhibit Number 4.

Q. Now, following the presentment of those demands, was there or not any change made in reference to that proposition? Did it remain face to face or did it go to portal to portal, or halfway between or anything else?

A. Remained face to face.

Q. Now, I believe in 1934, Mr. Thompson, there was a strike, a general strike on the mountain.

Was Raimund involved in that also?

A. Yes, sir.

Q. Your mines were closed down by that strike?

A. Yes, sir.

Q. Do you recall as to who—as to whether any people representing the government or any officers representing

the union, national officers, came here and discussed the question of settling that strike with you?

A. Yes, sir. As I recall there was a man named Richardson came here at that time to negotiate the settlement of that strike.

Q. Now, was George Coles, the International Vice President of the Union, here at that time also?

A. I think he was, yes, sir.

Q. And following your negotiations with Richardson and Coles and the members of the committee, did the men return back to work?

A. They did, yes.

Q. Now, when they returned back to work, did they return back to work on the face to face plan that had previously prevailed or not?

A. They went back on the same conditions.

Q. Do you recall whether or not there was an adjustment of wages made when they returned back to work at that time?

A. I don't recall, no, sir, but I don't think there was, though.

Q. Was there a letter written by the company to Mr. Richardson?

A. Yes, sir, a letter written setting out the terms under which we would go back to work, and also, as I recall, the wage—

Mr. Harris:

You have the letter?

Mr. Burr:

I can't find that letter. I thought it was here.

Mr. Harris:

Let me ask you something: Is it identical with the others?

Mr. Burr:

I think so. I will get the letter and put it in later.

The Court:

It will be exhibit 5.

Mr. Burr:

It is the Richardson letter. All the companies made similar replies. I want to check it before I say it is the same.

Mr. Harris:

That is the reason I didn't want him to state what was in that letter.

Mr. Burr:

I didn't ask what was in it.

(Copies of correspondence as follows were later furnished to the clerk and marked Republic Exhibit No. 5):

Letter dated Raimund, July 14, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., and signed W. H. Oldham, District Manager, Birmingham District;

Letter dated Bessemer, Alabama, July 15, 1934, addressed to Mr. C. L. Richardson, Commissioner-Conciliator, United States Department of Labor, Birmingham, Alabama, and signed George R. Coles and Rufus Kendrick;

Letter dated July 15, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., and signed W. H. Oldham, District Manager, Birmingham District;

Letter dated July 17, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., and signed W. H. Oldham, to which are attached two sheets containing wage scale;

Letter dated July 30, 1936, addressed to Mr. A. E. Horn, President, District Number 5, International Union of Mine, Mill & Smelter Workers, Bessemer, Alabama, and signed W. H. Oldham, District Manager, and showing copies to Mr. Newcomb Barco, U. S. Department of Labor, and C. L. Bransford and J. G. Walsh.

(By Mr. Burr):

Q. They returned to work following that letter?

A. Yes, sir.

Q. And they returned on the face to face plan?

A. Yes, sir.

Q. During the negotiations with Coles, the vice president of the Union, did any question arise during those negotiations the men should be paid for transportation time or any part of the transportation time?

A. I don't recall that it did.

Q. Is it your recollection that it did or didn't?

A. That it didn't.

Mr. Burr:

Now, this next one will be Republic Exhibit—

The Clerk:

Republic Number 6.

Mr. Burr:

All right, sir.

(Thereupon a form of proposed agreement between the Republic Steel Corporation and the Raimund Local Union

No. 121 of the International Union of Mine, Mill & Smelter Workers, consisting of eighteen numbered sections, and concluding with the words, "In witness whereof, the parties hereto have executed this agreement upon the ..... day of ....., 1935, the same being unexecuted, was marked Republic Exhibit No. 6.)

Q. Now, Mr. Thompson, I want to show you Republic Exhibit Number 6, and for the purpose of refreshing your recollection, I want to show you a letter, so as to get the date, that you wrote to Mr. J. G. Walsh, Superintendent of Mines, and also to one of the other officials in which you stated, "I am handing you a written agreement presented by the following committee representing the Smelters Union: W. H. Kendrick, Earl Clevenger, W. H. Boatner, Virgil Thomas, Albert Lowe, and Andrew Livingston," and ask you if this is the agreement that they forwarded with that letter?

Mr. Burr:

I have no objection to you all seeing the letter if you want to. It has other matters in it. I don't think it is relevant. I just want to be accurate about the date.

Mr. Harris:

Is that a letter from you?

Mr. Burr:

No, sir.

The Court:

A letter to the company to refresh his memory?

Mr. Burr:

As to the date.

Mr. Brodie:
The date he received this document?

Mr. Burr:
Yes, sir.

The Court:
What is that document?

Mr. Burr:
The proposed agreement.

A. Yes, sir.
Q. The date you received it is June 18, 1935, about that date?
A. Yes, sir.

The Court:
Is that the date the letter bears?

Mr. Burr:
Yes, sir.

Mr. Harris:
All he is doing is to let him look at the letter to get the date?

Mr. Burr:
Yes, sir.

Mr. Harris:
And that is not a contract; it is a proposal?

Mr. Burr:
It is a proposal.

Q. The ninth provision of that agreement reads:

"It is agreed that the employees shall enter the mine on their own time and come out of the mine on the company's time."

Now, did you have a meeting with the committee that presented these demands—

A. Yes, sir.

Q. —and discuss the demands?

A. Yes, sir.

Q. At that meeting did they make any insistence on or was there any discussion at all with reference to that ninth demand?

A. No, sir.

Mr. Burr:

Off the record.

(Thereupon followed an off the record discussion.)

Mr. Burr:

This will be Republic Exhibit Number 7. I am asking the questions about this letter and will substitute it later.

The Court:

Yes.

(Thereupon a letter dated May 26, 1936, and signed by A. E. Horn, President, District 5, International Union of Mine, Mill & Smelter Workers, was marked "Republic Exhibit Number 7.")

Q. I will ask you if on or about May 26, 1936, you received a letter signed by A. E. Horn, President, District Number 5, International Union of Mine, Mill & Smelter Workers?

A. Yes, sir.

Q. Was that letter presented to you by Mr. Kendrick, the President of the Local down there?

A. Yes, sir.

Q. Inclosed with that letter was there a proposed contract Horn sent—

A. Yes, sir.

Q. —with the letter?

A. Yes, sir.

Q. Did that proposed contract have this provision in it: "The eight hour day means eight hours in and about the mines eat the usual working places for all classes of workers."

A. Yes, sir.

Q. All right, sir. Now, since that time has there ever been at any time either verbally or in writing any presentment made by the Union or its committees to you in which they have brought up this question of traveling time; does this constitute the only times it has been brought to your attention?

A. Yes, sir.

Q. That we have gone over here this morning?

A. Yes, sir.

Q. All right, sir. Now,—

Mr. Burr:

Judge, off the record, I will have to apologize for not having these things in better order, but this is the first time I have seen them since this hearing down here.

The Clerk:

This will be Exhibit Number 8.

(Thereupon a document dated July 13, 1935, addressed, "To Committee of Employees," and signed W. H. Oldham, District Manager, was marked Republic Exhibit No. 8.)

Mr. Lipscomb:

Mr. Burr submitted a contract to which my name is signed. I didn't draw it and I don't like for that reference to be in the record.

Mr. Burr:

Take it out. I didn't mean it for the record at all. I was just guying you a little.

The Court:

Then it is withdrawn?

Mr. Burr:

Certainly. I had no desire for it to be in the record. Any remark I made to Jim or about him is withdrawn. I was talking to him across the table.

Q. I am showing you Republic Exhibit Number 8, and will ask you to state whether or not that is a correct copy of a letter that was sent to Mr. Horn and Mr. Kendrick and the other members of the committee that presented the proposed contract referred to,—whether or not that is a correct copy.

A. Yes, sir.

Mr. Burr:

Your Honor, it is short. I will just read it.

The Court:

What is the date?

Mr. Burr:

July 13, 1935. It reads:

"To Commitee of Employees:—".

Mr. A. E. Horn, International Representative, District Number 5, I. U. M. M. & S. W.,

R. H. Kendrick, Chairman,
C. D. Milford,
Gordon Moore,
Fred Ward,
A. E. Posey,
Preston Lee,
McKinley Belcher,
Elbert McCoy,
Virgil Thomas.

Dear Sirs:

Referring to list of demands which you presented as a committee representing a portion of our Raimund Mine Employees under date of June 17, 1935, to Mr. N. E. Thompson, Superintendent.

Beg to advise that it is the intent and purpose of this corporation to continue its present policy.

Owing to the unsettled conditions prevalent throughout the country at this time we feel it unwise to make any changes in our present policy. This policy has given satisfaction for the past twelve months, and we see no reason for either employee or employer making any change.

Therefore, these requests or demands, as set out, are denied, and we will continue indefinitely, as stated above, consistent with future business conditions.

We refer you to our letter of understanding to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., dated July 14, 1934, and wish to advise that we shall abide by this until such time as it is more definitely indicated that such arrangement is no longer practical.

Yours very truly, W. H. Oldham, District Manager."

(By Mr. Burr):

Q. All right, sir. Now, after that letter was sent, did they continue to work on the face to face plan?

A. Yes, sir.

Q. Without bringing up any question of any portal to portal question at all?

A. Yes, sir.

Mr. Burr:

This will be—

The Clerk:

Republic Exhibit Number 9.

Mr. Burr:

—Republic Number 9.

(Thereupon a form of agreement, which was unexecuted, between Republic Steel Corporation and Raimund Red Ore Local Number 121 of the International Union of Mine, Mill & Smelter Workers, containing sixteen numbered sections, and providing under Section 15, "This agreement shall continue in full force and effect until the .... day of ....., 1940," was marked Republic Exhibit No. 9.)

Q. Now, Mr. Thompson, I am showing you next Republic Exhibit Number 9, and I will ask you to state whether or not the committee of the Smelters Union presented that to you on or about September 26, 1939, as a proposed contract?

A. Yes, sir.

Q. All right, sir. Now, I show you next, please, sir, three separate papers consisting of a letter dated December 26, 1939, directed to you and signed by Van D. Jones, and the registered envelope which is attached to it, and an

agreement referred to in the letter, all of them under Republic Exhibit Number—

The Court:
Republic Exhibit Number 10.

Mr. Burr:
And identified as Republic Exhibit Number 10.

Mr. Harris:
Of course, the same general objection I stated yesterday to everything after 1938.

Mr. Burr:
Yes, sir.

(Thereupon a letter on the stationary of the International Union of Mine, Mill & Smelter Workers, dated 233 Fairfax Avenue, Bessemer, Alabama, December 26, 1939, and addressed to Mr. N. E. Thompson, Superintendent, Raimund Ore Mines of the Republic Steel Company, Bessemer, Alabama, and signed Van D. Jones, attached to which was a return receipt requested envelope addressed to Mr. N. E. Thompson, Superintendent Raimund Ore Mines of the Republic Steel Company, Bessemer, Alabama, and attached to which was a form of agreement in all respects identical with the unexecuted agreement described as Republic Exhibit Number 9, was marked Republic Exhibit No. 10.)

Q. I will ask you to examine the first page, and see if the letter on the stationary of the International Union of Mine Mill & Smelter Workers, signed Van D. Jones, Executive Board Member, District Number 5,—if you received that letter?
A. Yes, sir.

Q. Does it show the date stamped on there you received it?

A. Received it December 27, 1939.

Q. Did it come in this registered envelope attached there?

A. Yes, sir.

Q. And did it include the agreement that follows; was that the agreement referred to?

Mr. Harris:

You mean a proposed agreement?

Mr. Burr:

Proposed agreement.

The Court:

Proposed agreement, Mr. Burr?

Mr. Burr:

That is right, yes, sir.

A. Yes, sir.

The Court:

That is all the Exhibit 10?

Mr. Burr:

I think, Judge, that about gets them all.

The Court:

That is all Exhibit 10?

Mr. Burr:

Yes, sir, under one cover.

I think I have found this Richardson letter. I can put it in right now.

The Clerk:
Richardson letter?

Mr. Burr:
Yes, sir.

The Clerk:
That was Number 5, May 26, 1936?

Mr. Burr:
The first one was July 14, 1934.

The Court:
July 14, 1934?

Mr. Burr:
Yes, sir.

Q. All right, sir. If you will, Mr.—

Mr. Burr:
Judge, suppose you let me get these together during the lunch period.

The Court:
Well, it is time for adjournment now.

Mr. Burr:
It is time for adjournment now.

The Court:
We will adjourn until 1:30.

(Whereupon, at 12:05 P. M., July 18, 1941, a recess was had until 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

Direct Examination—Resumed.

Mr. Burr:

Here is the letter of understanding I couldn't find this morning.

The Clerk:

Republic Exhibit 5.

Mr. Harris:

That has other letters attached to it.

Mr. Burr:

All of them are in reference to the same matter. They are extensions of the original one.

(By Mr. Burr):

Q. Mr. Thompson, there are the letters in 1934 I couldn't locate this morning and I said I would supply later.

I show you now Republic Exhibit 5, the first letter is dated July 14, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation.

Is that the one you testified about this morning?

A. Yes, sir.

Q. The next one is dated July 15, 1934, to Mr. C. L. Richardson, Conciliator, signed by Coles and Rufus Kendrick.

Who was Kendrick at that time?

A. He was president of the Local at that time.

Q. And Mr. Coles was vice president of the International Union?

A. Yes, sir.

Mr. Burr:

This letter has not been read.

"Bessemer, Alabama, July 15, 1934.

"Mr. C. L. Richardson, Commissioner Conciliator, United States Department of Labor, Birmingham, Alabama.

"Dear Sir:

"This is to inform you that the proposition submitted to the committee in regard to rates of pay and collective bargaining has been unanimously accepted.

"We understood in the conference of yesterday that the company would agree to let the 325 employees who left the service of the company May 4th return to work, but would not have as much as four or five days per week for this amount of men. With this understanding we are willing to call the strike off providing that 325 men can return to work and share the work proposition if it is only two or three days of work per week for them.

"We would also like for it to be understood that there is 34 percent of the employees who were formerly employed by the Republic Steel Corporation who have been out of work since the 28th of January, and suggest that these men be given preference if competent and worthy before hiring new employees, when business conditions warrant such.

"Asking that you take this up with the management and have an understanding and communicate with us as to their understanding of this subject.

"Yours truly, George R. Coles, Rufus Kendrick."

Then the letter of July 16th, 1934, to Mr. Richardson:

"We will agree to return back to work the 325 men that were working on May 4th, as per our schedule submitted

to you last Saturday, and we also will endeavor where possible and consistent with ability, if there are any additional men to be put on due to increase in operations, that we will take these from the men out of work employed prior to December 17, 1933.

"Yours very truly, W. H. Oldham, District Manager, Birmingham District."

(By Mr. Burr):

Q. The letter of July 17th is the original letter to Richardson, which has the wage scale attached to it?

A. Yes, sir.

Q. Is that the wage scale?

A. Yes, sir.

Q. Does that wage scale show the different raises that were made, starting with janitor with a present rate of 26½ cents, and a proposed rate of 30 cents, and machinist, first class, getting 61½ cents, raised to 62½ cents; that shows all that?

A. Yes, sir.

Q. And the last letter is a letter of July 30, 1936, to Mr Horn:

"This is to advise you that we will continue our present policy as to wages, hours and working conditions at Raimund Ore Mine until further notice.

"I have discussed this with Mr. Barco, of the U. S. Department of Labor, and he says he feels this would be entirely satisfactory.

"You know well enough, Mr. Horn, that we do not need any understanding. When I gave my word as I did in a meeting at Raimund, that we are going to live up to it, and we expect you to do the same. In other words, a fifty-fifty proposition. Our past record stands for itself."

A. Yes, sir.

Q. That constitutes the correspondence, does it?

A. Yes, sir.

Q. About this whole matter?

A. Yes, sir.

Q. Mr. Barco, Mr. Oldham refers to in one of his letters, was he one of the government conciliators that came down here about this matter?

A. Yes, sir.

Q. And Richardson was another one?

A. Yes, sir.

Q. The next one—I will ask you if on January 9th—if, in 1939, the Smelters Union preferred charges before the National Labor Relations Board against the company involving certain matters set forth in the charges?

A. Yes, sir.

Mr. Burr:

I will ask you to mark this—

The Clerk:

Republic Exhibit Number 11.

The Court:

Preferred charges against the Republic Company?

Mr. Burr:

Yes, sir, before the National Labor Relations Board. I don't know it has any bearing—

The Court:

I was just wondering what bearing it had.

Mr. Burr:

—except that they didn't make any charges with reference to this matter and when the whole matter was settled they went back to work on the eight hour basis. That is where the relevancy comes in.

Mr. Harris:

Of course, we have our objection, if the Court please.

(Thereupon a document entitled United States of America, Before the National Labor Relations Board, Tenth Region, In the Matter of Republic Steel Corporation and International Union of Mine, Mill & Smelter Workers, Case No. X-C-548, Date Filed, March 9, 1939, and signed by Van D. Johes, was marked Republic Exhibit No. 11.)

Q. Was that a copy of the charges that were filed?

A. Yes, sir.

Q. Now, there was an amended charge filed. I will ask you to look at that and see if that is the amended charge?

A. Yes, sir.

Mr. Burr:

Will you mark this?

The Clerk:

(Thereupon a document styled the same as Exhibit No. 11, except Date Filed shows May 1, 1940, was marked Republic Exhibit No. 12.)

Mr. Burr:

Will you clip those together and mark them?

The Clerk:

They will be Number 13.

(Thereupon three documents, each entitled United States of American, before the National Labor Relations Board, Tenth Region, in the matter of Republic Steel Corporation and International Union of Mine, Mill & Smelter

Workers, Case No. X-C-548, and each entitled "Stipulation" were marked Republic Exhibit No. 13.)

Q. I will ask you if the charges that were on file before—presented to the National Labor Relations Board, if they were settled between the parties—

Mr. Harris:
We object to that, if the Court please.

Q. —and if Exhibit 13 is a copy of the settlement that was made between the parties?

The Court:
Overruled.

A. Yes, sir.

Q. Now, then, during that entire period was there any claim or complaint on the part of the union that they were not being paid for any portion of the traveling time, and that they ought to be paid for it?

A. No, sir.

Q. Did they go back—under that settlement did they go back and continue to work under the face to face plan, or was it changed?

A. Continued to work.

Mr. Burr:
The next one is the same resolution that was Exhibit B to the complaint.

The Court:
What is the date of that last exhibit, Exhibit 13?

Mr. Patterson:
Dated May 1, 1940.

The Court:
May 1, 1940?

Mr. Burr:
Yes, sir.

Mr. Patterson:
Yes, sir, 1940.

The Court:
That is Exhibit 13?

Mr. Burr:
Yes, sir. That is the stipulation settling the case.

The Clerk:
This is 14.

(Thereupon a resolution of Raimund Local Number 121 of the International Union of Mine, Mill & Smelter Workers, District Number 5, an Affiliate of the Bessemer Smelters Council, dated October 12, 1940, was marked Republic Exhibit No. 14.)

Q. I show you Republic Exhibit Number 14, and I will ask you if this is the original resolution you got from the local on the 12th day of October, 1940, in reference to—it purports to be with reference to overtime or traveling time—

The Court:
Dated when? Mr. Burr?

Mr. Burr:
October 12, 1940.

A. Yes, sir.

Q. Was Louis Tarrant at that time president of the Raimund Local?

A. Yes, sir.

Q. Was B. G. Stephens one of your Raimund employees?

A. Yes, sir.

Q. He signs his name as Recording Secretary?

A. Yes, sir.

Q. Mr. Thompson, did the Republic Company at its Raimund operations ever make a contract with the International Union of Mine, Mill Smelter & Workers; did they ever execute a contract?

A. No, sir.

Q. Have you down to the present time?

A. No, sir.

The Court:

Didn't they recently?

The Witness:

No, sir.

The Court:

It has nothing to do with this case.

Mr. Burr:

No, sir. Off the record.

(Here followed an off the record discussion.)

Q. All right, sir. Now, then, did you make any change, Mr. Thompson, in operations at Raimund on May 1, 1941?

A. Yes, sir, we made a change in the method of handling the men in and out of the mines.

Q. I wish you would explain to the Court how you did make that change and what the change consisted of.

A. Prior to May 1st we were handling all the men into Number 2 slope. After May 1st we handled the men through Number 1 and Number 2 slopes to the bottom—

Mr. Harris:

I can't hear you.

The Court:

Talk louder.

A. —since May 1st we are handling all them through Number 1 slope and Number 2 slope. We are transporting the men from Number 2 slope to Number 1 slope by bus. From there we carry them to the bottom by skip. From there the men proceed to their working places, either from Number 1 bottom or Number 2 bottom.

Q. Whichever is the closest?

A. The men are so distributed to get them landed as close as possible to their working places, and we also stipulate the time a man can report for work for that particular trip going down. We schedule the trips going down and coming up so as to get the men in the mine and out in the eight hours.

Q. You are operating now on an overall period of eight hours in the mine?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Let me see, Mr. Thompson, if I understand. Prior to May 1st the men went in on Number 1 slope?

A. Number 2.

Q. I mean Number 2.

A. Yes, sir.

Q. Now, you split them and schedule a portion of them to go in number 2 and a portion in number 1?

A. That is right.

Q. That bus you were talking about, what about that?

A. That is a bus to transport the men on the surface from where they check in at Number 2 to Number 1 and back again at the end of the shift.

Q. The men scheduled to go down at Number 1 slope check in at Number 2 slope?

A. They check in at Number 2 and are transported by bus to Number 1.

Q. You furnish that much of them transportation on the outside?

A. Yes, sir.

Q. And pay them to ride?

Mr. Harris:

We object to him arguing with the witness.

Mr. Burr:

It is not an argument.

Q. You are paying them for that ride down from Number 1 slope to Number 2 slope?

A. Yes, sir.

Q. Under operations since May 1, 1941, as contrasted with the period before May 1, 1941, has the working time at the working places increased or decreased or remained the same?

A. It has been decreased.

Q. How much has it been decreased?

A. Averages about an hour and twenty-five minutes.

Q. Does that constitute all the changes you have made?

A. That constitutes the changes we have made, but we have other changes on order—

Mr. Harris:

We object, if the Court please.

The Court:
I think so.

Q. We are not going into what you are contemplating doing.

Now, Mr. Thompson, are you working, since May 1st up to the present time, at Raimund mine,—are you working substantially the same crews, same number in the same working places and substantially the same condition you worked under before May 1, 1941?

A. We are working under the same conditions. We are working more men.

Q. You have put on more men?

A. Yes, sir.

Q. About how many more men?

A. About 25 or 30 more men.

Q. But with that exception it is the same mine and with the changes you have made in transportation, that is the only change?

A. Yes, sir.

Q. Could you tell us whether or not since May 1st, with the changes you have made, you have detailed here, putting on the additional men and changing the transportation, and having an hour and a half less working time at the face, whether or not your production has increased or diminshed or remained about the same?

Mr. Harris:
We object; illegal, irrelevant, incompetent and immaterial; has no bearing in this case.

The Court:
Overruled.

A. Our production has decreased.

Mr. Harris:

Same objection all the way through.

Q. Can you tell us how much it has decreased per day at the Raimund mine?

A. It has decreased on an average between 225 and 250 tons per day.

Q. That is per day?

A. Yes, sir.

Mr. Burr:

Will you mark this, please, sir, as an exhibit?

The Clerk:

Republic Exhibit Number 15.

The Court:

What is that?

Mr. Burr:

It is a similar pay receipt and statement that we have had.

The Court:

I don't see the necessity for it, Mr. Burr. It is just encumbering the record.

Mr. Burr:

Well, sir, I think, if Your Honor please, when you see the authorities, when a man comes up two or four times a month and acknowledges getting payment—

The Court:

You think it is an estoppel or waiver?

Mr. Burr:

I don't offer it at this time for that. We will make that claim when we get that far.

The Court:

I assume it has been to show the acquiescence of the men under the present contract.

Mr. Burr:

It is for the purpose of showing the conditions at the time Congress enacted the law.

The Court:

All right, sir.

Mr. Burr:

Do you want to see it?

Mr. Harris:

This has no date on it at all.

Mr. Burr:

I am just using that as a form. That is not any particular one.

(Thereupon a specimen pay statement and receipt of the Republic Steel Corporation, Birmingham District, Raimund Mine, was marked Republic Exhibit No. 15.)

Q. Mr. Thompson, I show you Republic Exhibit Number 15, and I will ask you to state whether or not that is the form that is used in making up the pay statements for the employees on which they get their money on pay day?

Mr. Harris:

We object, if the Court please.

Q. The fore part shows the statement of the earnings during the period, does it?

A. Yes, sir.

The Court:

Overruled.

Q. And the next part shows the deductions?

A. Yes, sir.

Q. And down here is where the individual signs a receipt for it?

A. That is right.

Q. Is a copy of this given to each individual; does each employee have a copy of that?

A. Each employee has a yellow sheet which he signs, and his money is given to him in this envelope.

Q. He keeps this?

A. No, sir, he turns this in to the Acounting Department; the paymaster, to receive this.

Q. Signs it and turns it in?

A. Yes, sir.

Q. How long has that been in force out there,—about how long?

A. That has been in force since I have been at Raimund mine.

Q. State whether or not they paid, prior to May 1, 1941, twice a month or four times a month.

A. Paid usually twice a month.

Q. How long has the twice a month payment of wages been in force out there?

A. Ever since I have been out there.

Q. Now, I am going to Spaulding next.

If the same thing done at Spaulding mine in the way of wages as that exhibit shows?

A. Yes, sir.

Q. All right, sir. Will you get for me the map of the Spaulding mine, please, sir?

(Thereupon a map of the Spaulding Mine of the Republic Steel Corporation was placed on the blackboard.)

Mr. Harris:

Now, we call the Court's attention to the fact that the complaint doesn't relate to the Spaulding operation in any way.

Mr. Burr:

I think it does. My recollection is that it does, but it doesn't make a bit of difference whether it does or doesn't. It is a mine right here on the same mountain that the ruling applies to, and if Your Honor decides this case—of course, the complaint does.

The Court:

I was thinking it does.

Mr. Burr:

"Plaintiff operates two iron ore mines, one at Spaulding and one at Raimund."

The Court:

I thought it did.

Mr. Burr:

It doesn't make any difference whether it does or not.

The Court:

Go ahead.

Q. Just one question before I get to the Spaulding mine. Was there another labor organization out at Raimund mine?

A. Yes, sir.

Q. What was that organization?

A. It was called the Brotherhood of Captive Mines.

Q. Do you remember when that organization was formed out at Raimund?

A. Sometime in 1934.

Q. Did you have committees from that organization that met with you during this period of time?

A. Yes, sir.

Q. Is that organization still in existence or not?

A. I don't think it is.

Q. About when did it go out of existence?

A. About three or four months ago.

Q. They ceased having committees about three or four months ago?

A. Yes, sir.

Q. Of course, you don't know who belongs or who does not belong to either organization?

A. No, sir.

Q. But you had meetings with them up until two or three months ago?

A. Yes, sir.

Q. And in those meetings did members of those committees raise with you the question of paying for traveling time?

A. No, sir.

Mr. Harris:

We object to that one specifically. That was a company union, and whether the members of a company union raised the question or not wouldn't have anything to do with whether an independent union raised the question or not.

The Court:

I overrule the objection.

Q. Let's get to the Spaulding mine.

Mr. Harris:

Judge, we have an objection to every question on Spaulding mine without having to repeat them?

The Court:
Yes, sir.

The Clerk:
Do you wish to introduce that map?

Mr. Burr:
Yes, sir.

The Clerk:
It will be Republic Exhibit Number 17.

(Thereupon a map of the Spaulding Mine of the Republic Steel Corporation was marked Republic Exhibit No. 16.)

Q. Mr. Thompson, is that the mine you spoke of this morning as having been recently reopened?

A. This mine was reopened in September, last year.

Q. Is that the mine where you have installed and operate some kind of concentration plant?

A. Yes, sir.

Q. You didn't tell me this morning,—that concentration plant, without going into details, in what way does it improve the quality of the ore? You said it made it more usable.

A. The process increases the iron content of the ore, and decreases the insoluble content with a loss of a certain amount of the ore itself and makes it more acceptable to the blast furnaces.

Q. I believe you said this morning it was being used with entire satisfaction?

A. Yes, sir, entire satisfaction.

Q. How does it compare with the Raimund ore?

A. It is a much higher grade of ore than the Raimund ore.

The Court:
Spaulding is?

The Witness:
After it has been beneficiated.

The Court:
Off the record.

(Here followed an off the record discussion.)

Q. I believe your general engineer Hassler is the one that perfected this plant?

A. Yes, sir.

Q. He can probably explain it more in detail?

A. Yes, sir.

Q. Can you tell the Court whether or not—where is the entrance to this mine?

A. The entrance to this mine is right here. There is the entrance to the ore slope which runs in this direction. The entrance to the manway where the men travel is right here. (indicating on Republic Exhibit No. 16.) It goes down in this direction and crosses over and comes into the ore where the two slopes converge at a point right here.

Q. Where is the ore being removed from at this time?

A. The ore is being removed from this area right in here. On this side of the main slope there are three places and three places on this side.

Q. What is the size of the vein of that ore?

A. That vein runs 20 to 22 feet in thickness.

Q. Is there a large or small supply of it there?

A. A large supply.

Q. Does that ore lie differently from what it does down below?

A. Yes, sir.

Q. In what way?

A. It is flatter pitched, and the principal difference is it is closer to the surface.

Q. It is closer to the surface?

A. Yes, sir.

Q. How do the men get to their working places from the surface?

A. They walk to their working places from the surface. The bath house is located right at the mouth of the slope, the man way. The men walk to the work room and get their lights and deposit their checks and walk down the man way to their working places.

Q. About how far is the furtherst working place from the surface?

A. The furtherest working place, it will take a man about five or six minutes to walk to his working place.

Q. Is that one way?

A. One way. It will take him about eight or nine or ten minutes to come out.

Q. Will that walking distance increase to any great extent as your mine progresses?

A. It will increase to a certain extent, but not as great as our other mine, because we haven't the area and property in front of us that we have in our Raimund mine.

Q. Which way does your ore lie, out this way or this way?

A. There is very little in front of it. Most of it is out this side.

Q. Does that ore lie there like it is shown on the map, pretty close to the surface?

A. It is 200 to 500 feet from the surface.

Q. What is the degree of that slope the men walk down, the man way?

A. About 15 to 18 degrees, and then it flattens off at 5 degrees at the bottom.

The Court:

That is near a gap in Red Mountain?

The Witness:
That is at Grace's Gap.

Q. Is that close to the power company station, Magella?
A. About half a mile from there.

The Court:
You spoke of a man way. That is not the haulage way at all?

The Witness:
No, sir. That is opened and kept opened for the men. It is a man way equipped with steps.

Q. I didn't ask you—I am glad the Court asked that. How does the ore come out of that mine?
A. The ore is handled in the same way as at our Raimund mine, to a pocket, and then in a skip to the surface.
Q. What sort of man way is that man way with reference to smoothness or wetness or dryness or wet condition?
A. It is a very good way to travel. It is dry.
Q. I believe you said the bath house is right there—
A. The bath house is right at the opening of the man way.
Q. Are the methods of mining the same, practically, as at Raimund; so I will not have to go into that?
A. The method is the same as our drag mining at our Raimund mine. The mine is entirely, with probably an exception or two occasionally, a mechanical mine.
Q. Is there a tool house at Spaulding?
A. Yes, there is a tool house on each of those long headings.
Q. The equipment is the same as at Raimund?
A. Yes, sir.

Q. The equipment is the same as at Raimund?
A. It is the same except it is heavier and larger.

Mr. Burr:
Mr. All has one or two questions.

The Court:
All right, Mr. All.

(By Mr. All):
Q. Mr. Thompson, at the Raimund mine—I don't believe you located it. Is that in line with the other mines on Red Mountain or not?
A. Yes, sir.

Mr. Harris:
Land lines you mean, or geographical lines?

Mr. All:
I mean along the line with Tennessee, Sloss and Woodward.

Q. Is it on the same mountain?
A. Same mountain, same vein of ore.
Q. Where is it with reference to the others?
A. It is on the same mountain. It is the last mine on the mountain.

The Court:
Beyond Bessemer?

The Witness:
Beyond Bessemer about a mile.

Q. All right, sir. Now, I just want to ask you a question or two with respect to your slope or tunnel. I believe you stated that the distance—I mean that the height

of the roof of your slope along that part of your haulage way where the men are carried in a man trip or carried in a skip, from the floor of the mine—from the bottom to the top, did you not?

A. Yes, sir.

Q. What is the height of that roof above the floor of the car that the men ride on?

A. Well, it is over six—six and a half—about six feet ten inches.

Q. Now, what I was interested in, from the point where the men get on the trip to the point where they are unloaded, is there any part of that trip where the men have to lean over to avoid coming in contact with the roof? If there is, what part of that distance?

A. No, sir, there is no necessity to lean over, unless it is an exceptionally tall man. There are places where—I don't have to duck my head, but I do because I think I am going to get hit.

Q. How many places are there—Is that all the way down?

A. No, sir.

Q. How much—

A. There is a place at the bottom where we have a small roller where you duck your head, and that is all.

Q. You are talking about Raimund?

A. Raimund.

Q. That is what I asked you. You stated that predominantly your loading crews were hand loading crews?

A. They are.

Q. And they vary in size from three man crews to five or six, I believe you stated?

A. They are.

Q. What determines the size of those crews, if there is anything that governs that, and what is the size of the average crew?

A. The average crew will be about four men, and they will vary with the width of the place and the amount of

tonnage that the contractor is able to break. That will determine the number of men,—muckers he has with his crew.

Q. How many drill men in those hand loading crews?

A. Only one.

Q. Only one in any of them regardless of the size? Now, you said something about those crews using shovels and picks. How are those shovels and picks in those headings originally gotten to the working places?

A. Originally—

Q. I mean when they are first put there?

A. They are carried down by service crews.

Q. And delivered where?

A. Delivered to the tool house. If there were a number of picks or shovels—Now, by originally, I mean when we start out—

Q. I am talking about when the new shovels were placed—new shovels and picks are put into a heading is what I mean.

A. New shovels and picks would be carried from the tool house by the service crews, or the man would come to the tool house during the work hours and get the picks and shovels.

Q. What is the usual life of a shovel or pick?

The Court:

I don't think that is material at all.

Mr. All:

Judge, I am trying to show who takes them down or whether the producers have anything to do with moving them into the headings.

The Court:

You can show that without going into the life of a shovel.

Q. After they are put in a heading, how often are they replaced?

Mr. Harris:
That is the same question over again in other words.

Q. Whether it is on account of the loss of the shovel or the life of the shovel, is it frequent they are replaced there?

A. It may be both, the loss or the shovel or wearing it out.

Q. Is it frequently they are replaced?

A. They don't last so long.

The Court:
What is the answer?

The Witness:
They don't last so long.

Q. How long?

A. Oh; about six or eight weeks.

Q. Now, I want to ask you about the powder and oil and the drill bits, and that will be all. I say about the powder and the oil and the drill bits,—

The Court:
Who brings them down into the mine?

A. The powder is handled by regular haulage crews, transported to powder houses that are located as close to the active workings as is safe. From the powder houses the contractors or someone designated by the contractor from his crew goes to the powder house and gets the powder during the shift and carries it to the place where he is working.

Q. That is during the shift, you say?

A. Yes, sir.

Q. Now, about the oil?

A. The oil is carried by the contractor or someone he designates from the tool house going to his working place.

Q. What member of the crew takes that usually?

A. The contractor or someone he might designate.

Q. What about the drill bits, do they remain in the heading, or are they brought out?

A. The drill bits are picked up at the steel shop close by the tool house by the contractor or someone he designates, and carried to the working place as he goes to his place in the morning.

Q. Are they large or small items?

A. Small.

Mr. All:

I believe that is all.

The Court:

Cross examine.

Cross Examination.

Mr. Harris:

Could you take down that Spaulding map so we will have the other map only showing?

(Thereupon the map of the Spaulding mine was removed from the blackboard, leaving the map of Raimund mine on the blackboard.)

(By Mr. Harris):

Q. Now, Mr. Thompson, you were in Court last week while the case was going on, weren't you?

A. No, sir. I was here yesterday.

Q. You were on duty at—for the Republic Company on Friday of last week?

A. I wasn't at Court last week.

Q. No. I was asking if you were on duty Friday of last week?

A. Yes, sir.

Q. Don't you know a man named Fowler, riding a man skip at Raimund mine had his head busted on Friday of last week?

A. His head wasn't busted. His head was hit.

Q. Well, did he have to go to a doctor for treatment?

A. Yes, sir.

Q. How many stitches did the doctor take in his head, do you know?

A. No, I don't.

Q. That happened while he was riding down in a skip at Raimund?

A. Yes, sir.

Q. Was he going down or being hoisted out?

A. Being hoisted out.

Q. That is the same man skip you told the Court you would think you had to bow your head, but really you didn't have to bow your head?

A. That is right.

Q. The same one?

A. The same one.

Q. Now, Mr. Thompson, is this map that appears here—has that been colored for use in this trial or is that the same way the map was kept in the office before any litigation arose, this coloring along here?

A. That was prepared for this trial.

Q. Prepared for the trial?

A. Yes, sir.

Q. Now, in preparing it for the trial, did you show anything about the different levels of that mine as to the relative height of one place above another place?

A. No. We couldn't do that on that map.

Q. You couldn't do that on that map? Have you prepared any map to show the Court how much higher the

underground workings are in one place than they are in another place?

A. No, sir.

Q. As a matter of fact, the workings in that mine at Raimund, some of them are 200 feet higher than the workings at other parts of the mine, aren't they?

A. No. The greatest difference, I think, is about 90—between 90 and 100 feet.

Mr. Burr:

Norman, keep your voice up. I am sitting down over here to try to rest.

Q. Mr. Thompson, from the mouth of that mine to the furtherest working face is approximately two miles, isn't it? I mean the way the men travel?

A. From the mouth of Number 2 mine?

Q. Yes, to the furtherest working face.

A. The furtherest working face shown on that map is 12,675 feet.

Q. That would be considerably over two miles?

A. Yes, sir.

The Court:

How much?

The Witness:

12,675 feet.

Q. And the men only ride about 2300 feet of that, or 3500 feet of that?

A. 2100 feet.

Q. So, it gives them 10,000 feet to walk if they work at the furtherest place?

A. Yes, sir.

Q. Now, in that walk in this mine, whose condition you summarized for Mr. Burr, there is one place alone in the

walk way or man way where men have to climb 107 steps in going to work, isn't there? If you nod, I can't hear you.

A. Yes, sir. I didn't count the steps. I don't know how many steps there are.

Q. And then those steps have a rise of from 8 inches to 11 or 12 inches for each step?

A. No, the rise is uniform.

Q. What is the rise of the 107 steps that the men have to go up?

A. About eight inches, I think.

Q. About eight inches, and at least 100 men on each shift have to walk by that, don't they?

A. Probably so.

Q. And on those steps water is dripping and the steps are slippery, aren't they?

A. No, they are not slippery. There is water running down the side of the steps.

Q. I will ask you to look at this and see if that isn't a picture of a portion of those 107 steps that those men have to climb?

Mr. Burr:

We would like to know where those pictures were taken and who they were taken by.

Mr. Harris:

I don't have to go into that. If I show him a picture and he says it is a picture of the place, that is sufficient.

A. It looks like a picture of the place.

Mr. Burr:

Would you mind having that identified?

Mr. Harris:

Oh, no; I will be glad to have it identified.

The Clerk:
That will be defendant's Exhibit Number 7.

Mr. Harris:
For identification. I haven't introduced anything yet.

(Thereupon a picture showing steps in Raimund mine of the Republic Steel Corporation was marked for identification Defendants' Exhibit No. 7.)

Q. Then there is another place in the mine where the men have to climb 32 steps, isn't there?

The Court:
What exhibit is that?

The Clerk:
Exhibit Number 7.

A. They have to climb a certain number of steps. I don't know how many there are.

Q. And in this two miles the men walk to the furtherest place you have electric power lines, haven't you?

A. Yes, sir.

Q. And those lines up to the working faces or stopes are right along over or on the side of the walkways where the men have to walk going in and out, aren't they?

A. Yes, sir.

Q. And how far would you say those electric lines are above the head of a man five feet six inches tall as he walks that two miles?

A. The minimum distance of an unguarded line is six and a half feet above the rail.

Q. Six and a half feet above the rail?

A. Yes, sir.

Q. Now, unguarded line,—what does that mean in mining language?

A. Means a line that is not guarded by some approved method to prevent shock.

Q. Now, what is an approved method to prevent shock?

A. By using strips of wood with steel clamps to prevent a man from coming in contact with the wire.

Q. Now, in how many places on that two mile journey would you say there were unguarded stretchers of your electric line?

A. Well, there are quite a number of places where the trolley wire is six and a half feet or above that we do not guard.

Q. Yes.

A. Approved by the State Mining Law.

Q. I didn't ask you about anything else. I move to exclude that.

The Court:

Yes, sir, that is excluded. Answer his questions. Answer what he asks you.

Q. Now, let's go back to this skip for a moment. You said that in Raimund Number 2 the slope, that is, the main slope was so steep, or varied from 25 degrees to 50 degrees —That is right, isn't it?

A. I think I said 15 to 50.

Q. Maybe you did. Maybe I have got it wrong. The reason that you have what you call your lattice, and the judge then asked you if you said ladder or lattice,—the reason you have this lattice work on the floor of your skip is because that slope is so steep that these men riding in the skip have to have something to stand on and hold to as the skip goes in and comes out, isn't it?

A. Yes, sir, that is right.

Q. That is the reason?

A. Yes, sir.

Q. And in that place where it is 50 or 52½ degrees, as that skip goes down or comes up, the man will have his

foot on the lattice, which has turned into a ladder, and then he is holding onto another part of the skip; that is the way they have to do, isn't it?

A. Either the side or the front.

Q. Either the side or the front?

A. Yes, sir.

Q. And that was true from October 24, 1938, on up to May 1, 1941, wasn't it?

A. Yes, sir.

Q. Now, when was it that you started loading the men in a skip with a top on it?

A. That was on May 1, 1941.

Q. I will ask you to look at that and see if that is a picture of the skip with the top on it that you installed on May 1, 1941?

A. That is right.

Mr. Harris:

I will ask you to mark that as our Exhibit Number 8 for identification.

The Clerk:

All right.

(Thereupon a picture showing a skip at Raimund Mine of the Republic Steel Corporation was marked for identification Defendant's Exhibit Number 8.)

Q. How high is the top of that thing above the floor of it?

A. A little over five feet.

Q. This is the thing you said held 38 men or 33 men?

A. No.

Q. How many men do you carry in it?

A. Approximately 25.

Q. How many of them are back there under the five feet roof?

A. Well, I have never counted them. All you don't see sticking their heads out there are sitting down inside.

Q. Now, then, before you used this skip—you had used that some before May 1st, hadn't you?

A. No; sir.

Q. You had just built it a day or two before May 1st—

A. That is the regular ore skip. After May 1st, in order to facilitate the hauling of the men, we carried them to Number 1 slope and put them in that skip, awaiting the arrival of the regular skip.

Q. Before you used this skip that was covered up and had lattice work on the floor, you had an uncovered skip that had been in use in '38, '39 and '40?

A. Not on that slope.

Q. In Raimund Number 2, I am talking about.

A. Yes, sir.

Q. That uncovered skip had the lattice work on the floor?

A. That was the only one we used that had the lattice work on the floor.

Q. And the uncovered skip, in addition to the lattice work on the floor, had the iron bars going across at a distance of four feet?

A. That is right.

Q. That bar wasn't put there to brace the skip, wasn't it?

A. No, sir.

Q. That was put there to keep the men from tumbling back on each other or from tumbling forward on each other as they went down and up these steep slopes?

A. That was to keep the men from crowding each other.

Q. And in this 12-foot skip how many of those steel cross bars did you have put in there to keep the men from crowding each other as they went down this steep slope?

A. I think there were three in this particular skip.

Q. When you spoke of the electric batteries this morning, you didn't make clear—you said the electric batteries were furnished by the company. You don't mean the company furnished the lights free of charge to the men, do you?

A. No.

Q. You mean the company rents them batteries or sells them batteries?

A. They rent them batteries at so much per shift.

Q. And what does a man have to pay for each battery on each shift?

A. Six cents.

Q. Six cents a battery?

A. Yes, sir.

Q. The contractors that work out there have to buy what tools and articles that were used in their work?

A. They bought such hand tools as were necessary to properly do their work.

Q. All right. Now, let's state to the Court the tools the contractors bought and paid for to the Republic Mining Company.

A. They bought shovels, picks, hammers and small wrenches.

Q. How about quarry bars?

A. Bought no quarry bars.

Q. Where did they buy those, underground or on the surface?

A. They bought those underground and on the surface.

Q. And when they bought them they continued to remain the property of the contractor, didn't they? The company didn't take them over from the contractors?

A. They were the property of the contractor, yes, sir.

Q. And as they were worn out the contractor bought new ones?

A. That is right.

Q. And the contractor or members of his crew, when he bought them on the surface, would carry these picks

and shovels down with them, and if he got them at the tool house underground, they would carry them from there to the faces, wouldn't they?

A. They would carry them or could have them carried by the motorman on a trip to the face.

Q. Now, then, did they also buy the detachable bits?

A. No, sir.

Q. Did they buy the powder?

A. Yes, sir.

Q. Did they buy the oil?

A. No, sir.

Q. Now, in carrying those tools during this two-mile walk from the man unloading station a man had to be alert always not to hold his pick over his head or his shovel over his head when he passed these unguarded electric cables, didn't he?

A. If he carried any tools like that. It was very seldom we allowed anyone to carry anything like that in the skip—in a regular trip.

Q. No; I am not talking about the time he left the man unloading station and walked to a working face. If he inadvertently rested his shovel or pick up over his shoulder, every time he came to one of those unguarded cables there was danger of a shock, wasn't there?

A. Certainly.

Q. How about the fuses and the caps the men used there; did they buy those?

A. Yes, sir.

Q. The contractor bought those?

A. Yes, sir.

Q. Do you still have contractors out there?

A. Yes, sir.

Q. Do you have out—do you still have—do you have an incentive plan out there whereby your contractors clear a rate of pay or a changed rate of pay on the tonnage?

A. No, sir.

Q. You don't know about any incentive plan with the contractors?

A. No, except what I have read and heard of the incentive plan from a distance.

Q. But I mean as to the operations of the Republic Company; there never has been any incentive plan since you have been out there?

A. No, sir.

Q. How is the contractor's—from 1938 up until May 1, 1941, how was the contractor's pay calculated?

A. The contractor's pay is calculated by the tonnage and a rate that is fixed for that particular place in which he is working.

Q. Now, in order to distinguish the tonnage that one contractor produces from the tonnage another contractor produces, you have brass checks—

A. Yes, sir.

Q. —which are put on the ore cars?

A. Yes, sir.

Q. How many—

The Court:

We will take a five minute recess.

Mr. Harris:

Yes, Your Honor.

(Thereupon proceedings were in recess from 2:30 P. M. to 2:40 P. M., at which time proceedings were resumed as follows:)

The Court:

Proceed.

Q. Mr. Thompson, up until May 1st you didn't have any men taken into the mine or brought out of the mine through Number 1 slope, did you?

A. No, I am sure we didn't.

Q. Now, let's go back to October 24, 1938. What time, on the day shift, did you start hauling the men down number 2 slope on the day shift?

A. About 5:30.

Q. What time did your last skip go down?

A. 6:30.

Q. Took an hour to move them down?

A. About an hour.

Q. You said on your direct examination any man could catch any skip he pleased. There couldn't be but thirty men catch the first skip?

A. That is right.

Q. If more than thirty got there all above thirty had to wait for the second skip?

A. Yes, sir.

Q. If all of them got there at 5:30, thirty of them had to wait until 6:30?

A. Yes, sir.

Q. Now, how many employees in 1938 did you have on your day shift, how many underground employees?

A. About 280 or 290, I would say. I wouldn't be positive about that.

Q. How many did you have on your night shift?

A. About the same number of them.

Q. And all of them, the 280 or 290, as the case might be, they had to ride down on skips, didn't they?

A. No, not all of them. There were fifty or sixty that didn't work underground at all. They worked outside.

Q. Well, you misunderstood my question. I said underground employees. So, you would say there were about 230 or 240 underground employees?

A. About that.

Q. And all of them had to ride the skip?

A. Yes, sir.

Q. And after they got to the bottom of the slope, to the man unloading station, during '38, '39 and '40, there wasn't any way whereby the company transported those men beyond that place, was there?

A. No, sir.

Q. But after they had made their shots and had mucked their ore and were coming out of the mine, you did have a way of bringing some of them out if they wanted to come that way?

A. Yes, sir.

Q. Now, how many trips did this auxiliary man transport system make at the end of the shift?

A. It would make from one to three trips.

Q. And how many men could it haul each trip?

A. Haul about eighty men.

Q. You had six little cars?

A. Had fifteen cars.

Q. Were they regular little ore cars?

A. No, sir, regular man cars, built specially to haul men in.

Q. Now, that first trip of that auxiliary transport system back in 1938 ran at that time on the day shift?

A. Well, the time was changed. The last time was about 3:30.

Q. And then the time before the last, what was it?

A. I don't know. We changed it several times to suit the convenience of the men. We were requested at various times to change the time of the trip.

Q. If they rode that auxiliary man trip, how long a ride did they get?

A. Almost a mile.

Q. And some of them, however, preferred to walk that mile rather than wait for that man trip?

A. That is right.

Q. Well, how long did they have to wait before that auxiliary trip started out?

A. The man trip was scheduled to leave at a certain time, whatever time we agreed to have it leave, and we left at that time.

Q. Well, when were you shooting, when the man trip left at 3:30 from the auxiliary station?

A. Shooting at 3 o'clock.

Q. Shot at 3, but muckers and mechanical loading men would frequently be through work before 3 o'clock, wouldn't they?

A. Yes, sir.

Q. And those were the men that, instead of going up to this place and waiting until 3:30 to get to ride, would walk on out, the men who had finished early?

A. Some of them would, yes, sir.

Q. Now, was that ride out on this little auxiliary man trip on level ground from the time the men would get in those little cars until the time they got out at the man unloading station, or was it uphill and down dale?

A. It was up and down hill.

Q. Was it or not in a place where you had mined what you call a slope, or merely in headings that had come through there?

A. It was operated partly on main haulage ways, and partly through old headings we had changed into a man way.

Q. If a man walked that distance did he walk a different way; that is, he didn't walk the same way your auxiliary transport—

A. They had several different ways. They could walk that way or come around and walk out through the number 2 slope, whichever way they preferred.

Q. I failed to ask you what was the electrical voltage carried in those exposed wires down in the mine?

A. 250 volts.

Q. How often at Republic did you have a clean up crew go over the haulage ways and pick up the ore that had fallen off the cars?

A. We were constantly doing that,—say once a week.

Q. You mean by constantly somewhere in the mine there was somebody picking up ore off the track?

A. Daily, yes, sir.

Q. But you don't mean on any particular line of track there was somebody picking up ore daily?

A. No, sir.

Q. They would get to any particular place on an average of once a week?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You spoke about beneficiated ores. Have you ever studied chemistry?

A. Yes, sir.

Q. Did you ever take a preliminary or elementary course, or did you go into it to any great degree?

A. I went into it pretty thoroughly, but I haven't practiced it in twenty years. I haven't practiced chemistry.

Q. One of the problems in the Birmingham district, ever since they discovered ore here, has been to beneficiate the ore, hasn't it?

A. Yes, sir.

Q. And when the mining industry first started, the belief current among mining men was you couldn't use the hard ores? You are familiar with the history of mining in this district, aren't you?

A. Yes, sir.

Q. Then they found out you could use the hard ores?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. And then they found out by making different combinations of ores, some of this ore from this mine and ore from another mine they could make better ore?

A. Yes, sir.

Q. So, during the entire history of the industry engineers and chemists have been working to devise better methods of beneficiating the ore?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. And the Republic trying to beneficiate the ore out at Spaulding, that is no new thing in the mining of ore in the Birmingham district, is it?

A. Yes, sir.

Q. The effort may be new, but the effort is a continuation of the efforts others have made?

A. The idea is not new, but the method and process is new.

Q. The idea is not new but the process is new?

A. The idea of beneficiating ores is not new, but the process we are using at the present time is new.

Q. Is your process a secret process?

A. No, sir.

Q. What process are you using?

A. We are using a process of grinding and classifying and separating the material from the hematite by a tabling process.

Q. You don't use any kind of flotation system, do you?

A. No, sir.

Q. When the men are working down underground without the mechanical loaders and a piece of ore comes out weighing 100 or 150 pounds, do they have to break that up underground or is it permitted by the company for them to pick it up and carry it and put it in the tram car?

A. They are limited to the size they can put in the tram cars by the size of our chute.

Q. What is the size of your chute?

A. About four feet—we limit the size of the ore. That limit with the mechanical loader is about thirty inches, but a man handling ore otherwise couldn't load that in a car. He would have to break it up.

Q. And what is the method of breaking up those big chunks of ore thrown out by the explosion or blast?

A. He breaks it up either with a hammer or lays it aside and lets the drill man shoot it up on the next shift, the following shift.

Q. He does not use the big drill but the jackhammer drill to drill holes to shoot up slabs that have fallen off?

A. Occasionally. There is not much of that done in the hand loading places. They are usually broken up small enough he can load them in the car.

Q. In using your jackhammer drill do you use water with your jackhammer drill?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Do you use water with your tripod and column drills?

A. Yes, sir.

Q. What method did you have in 1938, '39 and '40, of getting fresh air back two miles in the mine?

A. We had a fan at Number 2 mine that circulated it through the headings and leads through Number 1 mine in the slope and man way.

Q. How many fans did you have down in the mine itself?

A. We had none in the mine itself.

Q. That fan at Number 2 was all you had in '38, '39 and '40?

A. Yes, sir.

Q. What size was that fan?

A. The fan was rated about 130 or forty thousand cubic feet.

Q. Cubic feet per what?

A. Per minute.

Q. Now, you spoke this morning of a complaint before the Labor Board.

Mr. Harris:

I am not sure,—did you introduce that complaint, Mr. Burr?

Mr. Burr:

Yes, sir.

Mr. Harris:

The complaint before the Labor Board was itself introduced?

Mr. Burr:

Yes, sir, the complaint and amended complaint.

Q. Well, there was a complaint lodged in 1933 before the old Labor Board. Has that been shown you here today?

Mr. Burr:

No, that—

A. I don't recall.

Mr. Burr:

That wasn't. I haven't got a copy of that complaint.

Q. A copy of that complaint in 1933 was served on the Republic Company, wasn't it?

A. I would have to see the—

Q. Well, don't you remember there was a complaint before the Labor Board in 1933?

Mr. Burr:
There was no Labor Board in '33.

Mr. Harris:
Well, in 1934 there was a complaint.

Mr. Burr:
'34 either.

Q. National Labor Board, not National Labor Relations Board, but the National Labor Board; wasn't there a complaint back in 1933 against the Republic Company under the N. R. A.?

A. I don't know what you are referring to unless it is these complaints that came in from the local union. I don't recall any complaints from the Labor Board.

Q. I mean made by the union before the Board, is what I am talking about. Not one the Board instituted, but one the union instituted.

A. Well, we had complaints that were brought out here this morning—

Q. All right. Have you brought out all the complaints you have ever heard of or know anything about?

A. So far as I know we have. I don't recall any others.

Q. Does the Republic Company keep production records, and did it keep production records of its production of ore during the years '38, '39 and '40 and up to May 1, 1941?

A. Yes, sir.

Q. Did it also have production records of its pig iron produced during those years?

A. Yes, sir.

Q. And those—Did it keep records of blast furnace loadings during those years?

A. I couldn't tell you about that.

Q. Are those records that I mentiond kept here in the Birmingham district?

A. The records on ore, I know are kept here.

Q. And the records on pig iron produced, are they kept here?

A. I would say so. I am not sure. I don't have anything to do with it.

Q. What officers of the Republic Company—under whose department would those records be kept?

A. They would be kept under the accounting department.

Q. And who was the head and who is the head of the accounting department?

A. Mr. Hagy.

Q. How do you spell his name?

A. H-a-g-y.

Q. What is his first name?

A. J. L.

Q. I will show you a complaint headed Raimund Red Ore Local Number 121, I. U. M. M. & S. W., affiliated with American Federation of Labor, versus Republic Steel Corporation, Raimund Red Ore Mines, Bessemer Division, Defendant.

I will ask you to look at that and see if you recall seeing that.

A. I don't remember seeing this.

Q. Do you notice the certificate at the end of this:

"This is to certify that I have this 21st day of December, 1933, placed in the mail a true and exact copy of our complaint and request and Exhibit A, addressed to Mr. Wade H. Oldham, Vice President in Charge of Republic Steel Corporation, Birmingham, Alabama, and signed, J. A. Lipscomb, Birmingham, Alabama."

Mr. Burr:
Off the record.

(Here followed an off the record discussion.)

Mr. Harris:
I want to identify this as our next exhibit.

Mr. Burr:
Let me see what it is. Of course, I am not admitting its relevancy.

Mr. Harris:
I understand that.

Mr. Burr:
But I am perfectly willing to help you out.

Mr. Harris:
I will appreciate it.

Mr. Burr:
I think this is a copy of the original complaint. I think you will probably find it was amended subsequently.

Mr. Harris:
Well, we will find out about it. I will identify it now.

Mr. Burr:
I will be glad to help you get up the whole list.

The Clerk:
Do you want this marked for identification?

Mr. Harris:
Yes, sir.

The Clerk:
Exhibit 9.

Mr. Burr:
And also the final decision with reference to it.

(Thereupon a complaint before the National Labor Board by Raimund Local No. 121 of the International Union of Mine, Mill & Smelter Workers, against the Republic Steel Corporation, was marked for identification Defendants' Exhibit No. 9.)

Q. Now, then, Mr. Thompson, I show you a document—

Mr. Burr:
What was that identification number, please?

The Clerk:
Number 9.

Mr. Burr:
Number 9?

The Clerk:
It is Number 9.

Q. I show you a document bearing the signature in ink, Norman E. Thompson, and over to the left, sworn to and subscribed before me on this 4th day of October, 1940, Margaret Kennedy, Notary Public.

Is that your signature?

A. Yes, sir.

Q. And you did swear to it before Margaret Kennedy, Notary Public?

Mr. Burr:
Let me see that, see what you are talking about.

Q. Did you say you did swear to it before her?
A. Yes, sir.

Mr. Burr:
I would like—I assume this is one of the affidavits that was filed with the Administrator; is that right?

Mr. Brodie:
Yes, sir.

Mr. Burr:
Do I understand the Administrator is giving over to Mr. Harris that which he refused to give us as being confidential? We asked for every one of these affidavits.
I don't object to it. I want them all.

Mr. Harris:
We don't have to make any explanation of where we get a document, if the Court pleases.

Mr. Burr:
I know, but I am bringing it to the attention of the Court and I will, at the proper time, prepare a motion on it because they have affidavits I am very anxious to have.
Now, I see one of the affidavits in the hands of an attorney in this case—

Mr. Harris:
Which is perfectly all right.

Mr. Burr:
Which is perfectly all right. I want all the affidavits. I assume the Administrator in this case is not taking partisan sides,—ought not to be,—and if this stuff is confidential as to this affidavit—as to the other affidavits, it is confidential as to this one.

The Court:
This is a matter sworn to by this witness?

Mr. Burr:
Yes, sir.

The Court:
And an employee of the plaintiff?

Mr. Burr:
Yes, sir, but turned over—I don't think Your Honor catches the point.

Before this case was set for trial I made a motion—

The Court:
I remember that.

Mr. Burr:
—asking for the affidavits filed in this case, including not only the affidavits filed on behalf of the plaintiffs but affidavits of parties defendant in this case.

Your Honor held that was a confidential matter, and they didn't have to turn them over.

I want all those affidavits, and I don't see how Your Honor can take the position that one can be turned over and not the others.

The Court:
The fact they were confidential documents and so considered, and the fact he voluntarily lets one of them come into the case, does that prevent—does that authorize you to demand all of them?

Mr. Burr:
I should think it would.

Mr. Harris:
I don't—

The Court:
I don't agree with you.

Mr. Burr:
Take Mr. Kendrick, the president of that local; he has one of those affidavits that he made. Am I to be denied the access to it?
I don't object to this affidavit—

The Court:
We are going to let it in.

Mr. Burr:
I don't object to it coming in.

Mr. Harris:
It has been ruled on.

Mr. Burr:
I will bring it up by forman motion.

The Court:
All right.

Mr. Harris:
I don't know whether the witness answered by question before as to whether he swore to that.

The Court:
Yes, sir, he did.

Mr. Burr:
Are you offering that for identification?

Mr. Harris:
No, sir; I have not put in a single document.

Mr. Burr:
I mean for identification?

Mr. Harris:
Yes, sir.

The Clerk:
It will be exhibit 10.

(Thereupon the affidavit of Norman E. Thompson, sworn to before Margaret Kennedy, Notary Public, on October 3, 1940, was marked for identification Defendants' Exhibit No. 10.)

Mr. Burr:
Give me the date of the jurat.

The Clerk:
October 3, 1940.

Q. On your direct examination this morning you spoke about unsafe places which were covered with slag and ashes so the men would not slip.

Did you have a regular slag crew or ash crew that was continually going through the mines filling up places with either slag or ashes so the men would not slip?

A. No; sir, we didn't. We do not have enough such places to warrant that.

Q. How often did you send men out to fix the slippery places with slag and ashes?

A. As often as it was deemed necessary, and the places warranted that treatment.

Q. Could you give us any idea of the frequency with which you sent such men out during '38, '39 and '40, up to May 1, 1941?

A. Sent such men out? I don't understand.

Q. Yes, to fix up places with slag and ashes so the men would not slip. How often did you do that?

A. There would be no definite time for that. It would vary with the period of the year. During the period of the year when there was more moisture we would use more slag and ashes on these particular places. Other times of the year it was not necessary at all.

Q. Was that moisture that condensed from the air?

A. Yes, sir.

Q. It was not water that came in through the earth?

A. In some instances it was water that came through the formation.

Q. Do you have pumps to pump out water that came through the formation?

A. Yes, sir.

Q. How many water pumps did you have at the Raimund workings in '38, '39 and '40, and up to May 1, 1941, pumping out water?

A. I couldn't tell you that.

Q. Could you give us any idea at all?

A. Oh, six or eight smaller pumps and six large pumps that handled the main body of water that was pumped out of the mine.

Q. What do you mean by the main body of water?

A. The continuous flow that is caught above the ledge of the trough that we use for domestic purposes and for cooling our compressors and for fire protection and that sort of thing.

Q. That was not water that ran down and made the slippery places; that was the reservoir where you got your water for operation?

A. That is what it was used for. That was not the purpose. The water had to be pumped out of the mine or

it would have gone down to our lower workings. Because of the quality of the water it could be used for the particular purpose to which we put it.

Q. You kept about six big pumps busy pumping that water out?

A. We had four at one mine and two at another. They did not work continually.

Q. In addition to that you had small pumps?

A. We had gathering pumps to pick the water up at the distant places. Those pumps were moved all the time and used more or less at any particular time.

Mr. Harris:
That is all.

The Court:
Are you through?

Mr. Harris:
Yes, sir.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Thompson, Mr. Harris asked you about a man named Fowler who got his head hurt last Friday.

A. Yes, sir.

Q. How was that man hurt?

Mr. Harris:
Well, unless he was there and knows something about it, he couldn't go into the details.

Q. You got the report?

The Court:
Yes; he has to speak of his own knowledge.

Mr. Burr:

His evidence as to the man being hurt would be hearsay.

Q. Did you get that knowledge from the same report?

Mr. Harris:

We object to that.

The Court:

That is a question of his knowledge.

Mr. Burr:

I understand, but if he wasn't there when the man was injured, how could he testify except by hearsay?

Mr. Harris:

How do I know it was hearsay. I object on the ground of hearsay.

The Court:

Sustain the objection.

Mr. Burr:

We except.

Q. Are you familiar with accidents that have happened in the mine since you have been there, Mr. Thompson? Are those accidents always reported to you?

A. Yes, sir.

Q. How many accidents of that kind have you had since you have been in charge of that mine as superintendent?

A. This makes the second accident.

Q. How many years does that cover?

A. To my knowledge it covers ten years.

Q. And you don't know how he got hurt; what he did to get hurt?

Mr. Harris:
We object to that.

Mr. Burr:
I am asking him if he knows.

The Court:
Overruled, if he knows.

Q. Do you know how that man got hurt of your own knowledge?
A. Which man?
Q. Fowler, the man that got hurt Friday?
A. The only knowledge I have is through the accident report.

The Court:
You don't know.

Q. You don't know of his own knowledge how he got hurt?
A. No, sir.
Q. But you do know you have had only two accidents—

Mr. Harris:
He went into that.

Q. You have had only two accidents, as I understand, reported to you during this length of time?

Mr. Harris:
I object as needless repetition.

The Court:
I sustain the objection.

Q. And how Fowler got hurt you don't know of your own knowledge at all?

Mr. Harris:

We object to that as a needless repetition. He has asked that.

The Court:

I sustain the objection.

Q. Mr. Harris asked you about this map. Mr. Harris asked you whether this map was prepared for this case. Do you recall whether or not this map was first prepared for a hearing held here by the Wage & Hour Administrator and just brought down to date for this case; is that how it was prepared?

A. That is right, yes, sir.

Q. I want to call your attention to Defendants' Exhibit 8, offered for identification.

Was that car ever in use for hauling men prior to May 1, 1941?

A. No, sir.

Q. What was that car used for until you began complying or trying to comply with this portal to portal—

A. That is the skip that handles the ore out of our Number 1 slope,—used for handling the ore.

Q. Is it the same type of car you use for handling the ore?

A. That is the car we used for handling ore.

Q. That is the car and you are using it temporarily until you can get another car?

A. We are using it temporarily until we can get two man cars we have on order.

Q. And it was never used prior to May 1, 1941?

A. No, sir.

Q. What was the purpose of having an ore car with a cover on the back end?

A. The purpose is to handle more ore. Before we put the top on we were handling about eight tons of ore per trip in the skip and now we are handling about twelve tons.

Q. Why is that?

A. To handle more ore and get more production.

Q. Why would it hold more ore with the top on?

A. The skip travels over a slope of about 45 degrees, and if we didn't have the top on it the ore would fall off.

Q. That was the object of the top?

A. Yes, sir.

Q. And it wasn't put there to keep the men from getting their heads hurt?

A. No, sir.

Q. And it was never used prior to May 1, 1941?

A. Not as a regular man car.

Q. It was used as an ore skip and not as a man skip?

A. Yes, sir.

Q. Now, he asked you about these steps shown by Exhibit Number 7 for identification.

Where do those steps go to?

A. Those steps go up the man way and come out at our underground steel shop.

Q. Do the men have to go up those steps to go to their working places or not?

A. No. They can go around straight through number 2 haulage way and slope and come into their working places.

Q. What are those steps made out of?

A. Concrete.

Q. And they go up to the tool house?

A. Yes, sir.

Q. He asked about some more steps. Where is the twenty-two steps or something like that he asked you about? Where are they?

A. Those steps are in number 2 mine on the haulage way that most of the men travel.

Q. Is that the haulage way—what part of the haulage way—Could you indicate there on the map about where that is?

A. Those steps are right in this area right here where the ore is faulted. There is a displacement thereof about forty feet above the main haulage way. The steps go from this lower haulage way to the upper haulage way, and here the men do travel them down through this part of the mine to their working places.

Q. That is, then, further down than the underground man loading station?

A. Here is the underground man loading station, and the steps are there (indicating on map).

Q. And the men who go this route and walk that way in preference to coming this way use those steps?

A. Yes, sir.

The Court:

Mr. Thompson, where is—will you indicate on the map where these steps were in this picture here?

The Witness:

Those steps are in the Number 1 man way at a point—

Q. Take a pencil and mark it, Norman.

A. Right in here.

Q. Now, draw a line down and put "steps" down where you can see it.

A. (Witness indicates on map).

Q. Now, you were asked about some unguarded electric lines. Where are those underground lines?

A. Those lines are on the main haulage ways where the trolley wire is six and a half feet above, or better or more, above the track, and six inches outside the rails.

Q. Now, during your experience there as superintendent and since you have been there connected with these mines, have you or not had anybody hurt by those lines? If so, how many and over what period of time?

A. Yes, we have had some accidents due to coming in contact with trolley wires. As I recall, about four or five years ago is the last accident we had, and I don't believe we have had more than three or four accidents of that nature in my experience at Raimund.

Q. Is that clearance—you said something about approved by the mine inspectors. Is that clearance for unguarded wires approved by the State Mine Inspector or not?

Mr. Harris:

I object. I understand they don't have any rule—

The Court:

I sustain the objection. We can't go into all these things.

Q. All right, sir. You gave the distance at those places where you have those unguarded wires, not guarded. Where are you measuring that distance from?

A. The top of the rail.

Q. From the top of the rail to the place where the wire is is how many feet?

A. Six and a half feet.

Q. Six and a half feet?

A. Yes, sir.

Q. Is that where the men ride in the skip or not?

A. No, sir.

Q. Whereabouts are those places?

A. Those are on the main haulage ways, travel ways where the ore is handled by electric locomotive within 500 feet of the face or actual working place, and in those places the ore is usually handled by a locomotive with a reel cable which hangs to the trolley wire, and then the locomotive runs into this place and gets its power from this uncovered cable.

Q. He asked you about the hazards of the wires from men carrying picks and shovels. Is that where the men carry picks and shovels under the requirements of the company or not?

A. No, sir.

Mr. Harris:

We object to the requirements of the company.

Q. Is that where they carry them at all or not? We want it both ways.

A. There are instances where they do and have carried picks and shovels under those wires.

Q. Is that against the rules and policies of the company and instructions of the company and your efforts to keep them from doing that, or not?

Mr. Harris:

We object to the question in that form.

Mr. Burr:

You went into the question of it being a hazard.

The Court:

Overruled.

A. No, sir; it is not against the rules, but it is against our policy, and we try—

Mr. Harris:

We move to exclude it being against their policy.

The Court:

I sustain the objection.

Q. What was—you started to say you try to do something. What did you say you tried to do?

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
I can't read his mind. Let me ask off the record.

The Court:
All right.

(Thereupon Mr. Burr conferred with the witness off the record.)

The Court:
That is the end. We are not going any further with that matter.

Mr. Burr:
Then we except to not being allowed to find out off the record.

The Court:
We are not going to spend the balance of the afternoon on matters of that sort.

Q. State whether or not, Mr. Thompson, in carrying these tools you did not direct your mine foreman or otherwise to try to prevent the men from carrying them or anything of that kind?

Mr. Harris:
We object to the question in that form, leading and suggestive.

The Court:
I sustain it.

Mr. Burr:

All right, sir. We except.

Q. I am not sure that I understood from your answer on cross examination as to whether or not this latticed work you have in the man skips—was that lattice work in the skip that has always been operated down the regular mine slope, or is it in this one that has been shown for identification?

A. That is in both skips.

Q. In both skips?

A. Yes, sir.

Q. Did you put that in the skip when you adopted the man skip for use or had it been there all the time?

A. Are you speaking about the ore skip?

Q. Yes, sir; is that in the ore skip you have been using for hauling men down the slope since May 1st?

A. That was put in there for the convenience of hauling men down the slope.

Mr. Harris:

I think he went into that on direct examination and said they took it out while they were handling ore; that it was put in there for the convenience of the men.

Q. I just wanted to find out whether it was in both skips. It was in the one you use since May 1, 1941, and the one used prior to that time?

A. Yes, sir.

Q. Mr. Harris asked you about whether or not the company sold shovels and picks and tools to the contractors and underground miners.

A. Yes, sir.

Q. I believe you stated they did?

A. Yes, sir.

Q. Are those sold to them at cost or with a service charge or for profit, or what about that?

A. The tools I mentioned are sold at cost.

Q. Any charge made at all for the service of selling them?

A. No, sir.

Q. Is there any obligation on them at all to get them from you or are they free to get them where they please?

A. There was no obligation to buy them from us.

Q. How about the powder? How is that sold, at cost or profit?

A. It is sold at cost plus a small handling charge for transportation into the mine.

Q. Is that true of the caps or not?

A. The caps are sold at cost and below cost, as I recall it.

Q. Cost and below cost?

A. Yes, sir.

Q. Now, you were asked again on cross examination as to whether or not some of the men who worked in this portion of the mine, that is, below where the auxiliary man trip runs, walked out instead of using the man trip.

Could you tell us about what proportion of the men that work down here walked out in preference to riding the man trip out?

A. When the man trip was first started we operated three scheduled trips. Two of those trips were loaded. The third trip was partly loaded. As time went on we gradually reduced the number of trips, gradually reduced the number of cars per trip because we found the men were not available themselves of the man trip that was being run, so at the present time only one man trip is being run.

Q. That answers my question in a way, but would you give your judgment of about what proportion or percentage along about May 1st were walking in preference to riding?

A. About 3/4,—2/3 to 3/4 of the men used the man trip to start with, and finally about 1/3 to 1/4 of the men used the trip.

Q. Now, Mr. Harris placed it as to whether or not the men,—some of the men didn't use—didn't walk out in preference to using that auxiliary man trip because they had left their places of work before three o'clock.

What time did that man trip stop—start, I mean?

A. The last schedule time was at 3:30.

Q. And what was the first schedule?

A. I don't recall exactly what our schedules were. We changed the schedules two or three different times to suit the convenience of the men. We started earlier than that when we first started the trip. The men complained the trip was running too soon so we lengthened it,—advanced the time of starting those trips and finally it dwindled down to one trip at 3:30.

Q. One trip at 3:30?

A. To take care of those men that wanted to ride out at 3 o'clock.

Q. Something was asked you about the ventilation in that mine, Mr. Thompson, and you explained your system of ventilation, but I would like to ask you as to what the results of that system have been. Have you had any trouble or not with ventilation in that mine?

Mr. Harris:

We object to that, if the Court pleases. That is highly indefinite,—have you had any trouble.

The Court:

All right. We will let him answer it. We want to get through. We want to take up another witness today.

A. No, sir, there has been no trouble.

Q. Has the ventilation been good or bad or how?

Mr. Harris:
Same objection, if the Court please.

A. It has been good.

Q. Have there or not been any accidents of any kind during the time you have been there at all claimed to be due to the ventilation?

Mr. Harris:
Same objection, if the Court please.

The Court:
Overruled.

A. I don't recall any.

Q. Now, these places in the mine, how many of them are there in the mine and where are they located, and the number of them where you have put this slag or other substance to keep it from being slippery?

A. The principal place is at the foot of the Number 2 slope where the air enters the mine and where the dampness at certain seasons—periods accumulates, and we constantly keep that covered with slag or ashes, and in number 1 manway below these steps there are a few places in there where we keep slag or sand to sprinkle over those areas.

Q. Now, are they the only places where you do find it necessary to keep slag or sand?

A. Those are the principal places. There are a few scattered places.

Q. As a general rule, is it necessasry over the mine as a whole?

A. No, sir.

Q. They are exceptional cases?

A. Yes, sir.

Q. Do you keep them in good condition by that process or not?

A. Yes, sir.

Q. Have you ever had any accidents, in your knowledge, of people getting hurt by slipping or falling down because of it being wet or damp there in the mines?

A. Nothing particularly serious, a sprained ankle.

Q. Have you had any sprained ankle?

A. The only case of that kind I know is a man running, trying to catch the man trip—

Q. That is the only accident of that kind you know about since you have been there?

A. Whether that was slippery ground or not, I couldn't say.

Q. I don't know that I understand about these pumps. Have you got a pump somewhere in the mine where you assemble the water you pump out of the mines?

A. We have two main sumps. We have one at the Number 1 mine at 26 heading, which is right at this point, and Number 2 mine at 27 heading. All the water that accumulates from the upper workings, upper section of the mines,—this represents a big fault, these two lines here. All the water that accumulates above that big fault is accumulated in those two sumps and pumped out of the mine by those big pumps.

Q. Is that where those pumps are located?

A. Yes, sir.

Q. Pumped out of the mine for what purpose?

A. For what purpose?

Q. Yes, sir.

A. To rid the mine of water.

Q. Is the water used for anything?

A. Yes, sir, for cooling, compressors, fire protection, domestic purposes.

Q. In other words, that is your water supply, your reservoir for your water supply?

A. Yes, sir.

Mr. Burr:
That is all.

The Court:
Have you anything, Mr. Harris?

Mr. Harris:
I have no further questions.

Mr. Burr:
Then, Your Honor, for the record, it is stipulated, without any waiver of the relevancy of it, of course, that the letter dated May 26, 1936, that went to the other companies and has already been offered in evidence, was likewise sent to the Republic Company, and enclosed in that letter was the same proposed contract to the Republic Company as was sent to the other three companies.
I believe that is all for Mr. Thompson.

The Court:
You are excused, Mr. Thompson.

Mr. Burr:
I bet he is glad to hear it.

(Witness excused.)

The Court:
Who will you have next?

Mr. Monaghan:
That letter has been identified as Sloss Exhibit Number 7.

The Court:
We will adjourn until 9:30 Monday morning, the regular time. We are not on daylight savings,—the Court and

city will not be, so we will come here at the regular time, 9:30 Monday morning.

Court is adjourned until then.

(Whereupon, at 3:55 P. M., July 18, 1941, an adjournment was had to 9:30 A. M., July 21, 1941.)

July 21, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:

Are you ready for the first witness?

Mr. Burr:

Yes, sir. I will use Mr. Geisking first, just on a formal matter.

1928 M. H. GEISKING, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:

What is your name, please, Mr. Geisking?

The Witness:

M. H. Geisking.

The Court:

G-e-i-s-m-a-n?

The Witness:

G-e-i-s-k-i-n-g.

(By Mr. Burr):

Q. Mr. Geisking, do you have charge and have you had charge for the past several years of the contracts made with the government, and recently what we call war contracts?

A. Yes, sir.

Mr. Burr:

Off the record, if Your Honor please, I might save time. We have a number of contracts here, and under our agreement at the beginning I want to offer them and then withdraw them.

Mr. Harris:

Well, any contracts with the government—

Mr. Burr:

I know you have your objection.

The Court:

I would like for you to state your grounds.

Mr. Harris:

As we see it, if the Court please, any government or private contracts would not be relevant evidence in this case. They are wholly irrelevant to the question before the Court, which is the simple question of whether or not —rather, a simple question of when the work time begins, when a man is actually at work under the orders of the company.

There were not any defense contracts between these plaintiffs and the United States Government at the time Congress passed the Fair Labor Standards Act, and people can't go out and make any sort of private agreement or public agreement that would operate to change a law, to emasculate a law, so, as we see it, we not only would be going into stuff that is immaterial and irrelevant, but on

the greatest stretch of reasoning couldn't possibly shed any light upon the intent of the Congress—Mr. Burr has offered a number of things on the theory he was going to show the intent of the Congress, but there wasn't any war in 1938, and so, even on that theory it couldn't be admissible as we see it.

Furthermore, if we go into defense contracts it becomes necessary to remember the Government and the companies entered into discussions as to prices and profits, or escalator clauses, and we would have to start into a complete study of the entire industry and all kinds of industries, so we think for those reasons, among others, that any question—any evidence of defense contracts would be completely out of the case.

My information is that they struck the defense contracts from the pleadings. I may be wrong about that—

Mr. Burr:

No; you are wrong about it.

Mr. Harris:

But whether they did or not, even if they still be in their pleadings, a man can't by pleading something that has no bearing on the issues, entitle himself to produce evidence that has no bearing on the issues.

Now, it may be Mr. Brodie has an additional objection.

The Court:

I want to hear from Mr. Burr right now.

Mr. Burr:

If the Court pleases, the purpose of offering these war contracts—

The Court:

I didn't hear you.

Mr. Burr:

The purpose of offering these war contracts is entirely out of line with what Mr. Harris states in his objection to them.

We have two questions in this case. One is the construction of Section 7 as it relates to back time. That is the question in which Mr. Harris is principally interested. Another question in which we are interested, and the sole question in which the Administrator is interested,—the other party,—is whether or not that portal to portal ruling shall remain in effect in the future; that is, whether the Administrator's opinion with reference to it is correct or incorrect.

As Your Honor will recall, our complaint alleges, and on the allegation is based the jurisdiction of the Court,—certainly as far as the Administrator is concerned, because he has no concern with the back pay issue at all, that in the future plaintiffs will suffer irreparable injury if the opinion of the Administrator remains in force.

It is not for the purpose of showing the intent of Congress because it happened long after Congress passed the Act.

But it is for the purpose of showing the injury that may result to this company, permanent injury, irreparable injury, as alleged in the complaint, if this ruling remains in effect.

And we have the contract here to prove those allegations. We have a number of valuable contracts made with the government in which we agree without any ifs, ands and buts, to be subject to the regulations of the Administrator with reference to this matter. That is put in these contracts. That is what I am offering the contracts for. That is a matter of relevant testimony, material testimony in this case. That is all we are offering the contracts for. There is no question about prices, there is no question about profits, there is no question except

but what we have the contracts that compel us, as alleged in the bill, at the risk of losing our business, to put the portal to portal into effect while this case is being determined. That is all they are for. They don't involve profit; they don't involve costs.

There is not a thing in the world in there except the provision they come under it.

The Court:

Aren't they objecting to the conforming with the ruling?

Mr. Burr:

No, sir, not as far as these contracts are concerned. If they were, we could test that in the Courts, but Your Honor is familiar with the recent decision that under government contracts it don't make any difference what provisions they put in the contracts, that they can put in any private contract anything they wish. They put in there it shall be subject to the direction of the Secretary of Labor, and it contains this provision:

"No person employed in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor,"

and said contracts further provide, on account of the breach or violation of the stipulations therein contained, for liquidated damages. In other words, if we hadn't put this in, we are liable for damages,—liquidated damages,—for "liquidated damages in addition to damages for any other breach of the contract in the sum of ten dollars

per day and a sum equal to the amount of any reduction, rebates, refunds or underpayment of wages due to any employee engaged in the performance of the contracts, and in addition of the United States entering into the contract shall have the right to cancel same and to make open market purchases, or to enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor."

Now, that is the relevancy in this case of this evidence, and it is not only within the pleadings but it is within the jurisdiction of the Court as far as the Administrator is concerned, to show that as long as this ruling remains in effect, if we don't comply with it, and that is the allegation of our bill, we stand subject to the provisions in the contracts, as to which there is no judicial review at all,—stand subject to those provisions to pay liquidated damages, and have the contracts canceled at any time, and that is what would have happened to us if he hadn't put this in on May 1, 1941.

So, I say to the Court there can't be any question about it, and every point Colonel Harris has raised is not at all in line with the purpose of the offer of the contract. There are no profits involved. The only thing involved here is whether or not our contracts that say in effect the Administrator shall be the supervisor, so far as wages and hours of service are concerned, if we don't follow his construction of it,—not the Court's construction, but his construction, will stand subject to cancellation, and we are liable for the liquidated damages.

Mr. Harris:

Now,—

Mr. Brodie:

Will Your Honor hear me on that?

The Court:

I will hear Mr. Brodie.

Mr. Brodie:

He says the Secretary of Labor. That refers to the Walsh-Healey Act.

As we have stated to Your Honor, the Administrator has no power to make a binding interpretation of what this act means upon this Court. In certain cases he has the right to promulgate certain regulations which have the effect of law, but in this case he is merely stating his opinion, and he has as much right, in the performance of his duty, to state what the law is as counsel or anyone else, and the Court may or may not give that opinion weight.

Consequently, the question then becomes a matter for the Court whether the Tennesese Coal, Iron & Railroad Company or the Republic Steel Corporation or the Sloss-Sheffield Steel & Iron Company or any other company has violated the statute by working, or by not paying overtime for work, in excess of the statutory maximum for the time that the workers spent underground. That is the question for the Court to determine, whether the companies have violated these overtime provisions of the Act.

Now, that determination of that question is not dependent on anything in these war contracts. They have come into Court to determine whether they have complied with Section 7 of the Act in not paying their employees overtime for hours in excess of the statutory maximum which they spent underground, and that is the only issue before Your Honor. It isn't a question of what these contracts say or anything of the sort, but according to counsel's statements, these contracts confer upon the Administrator a greater power than the statute gives him, a greater power than the Administrator claims. The Administrator

has never contended he has the right or the power to make any binding interpretation. The Administrator could proceed in the performance of his duty without issuing any public interpretation. Those public interpretations are just merely as a public service to inform people what his policy will be, but his position in enforcing the Act is in the same position as the Attorney General is in. The Attorney General, for example, is not required to issue a proclamation he is going to apply the Sherman Anti-Trust Act in a certain case, and if he goes ahead in the performance of his duty and in enforcing the Sherman Anti-Trust Act in a certain way, it does not become material that there are provisions in a contract that may state otherwise. If he did issue such a proclamation it would have no binding effect. He has no power to issue such a proclamation.

The question is not whether the Administrator's interpretation is right or wrong. The question is whether these men are at work within the meaning of the statute when they enter the mine. That is the sole question before Your Honor.

I would like to say one further thing with respect to this, Your Honor will recall we gave notice of the taking of oral depositions. One of the witnesses whose deposition we desired to take was Mr. Geisking. We were prevented from doing that.

Further, at a hearing on a motion to compel more complete answers to interrogatories, counsel for the plaintiffs stated he was going to withdraw from his pleadings all those allegations respecting impossibility of performance, respecting National Defense contracts and so forth. Relying upon that interpretation we said we would not press our motion.

Now, for all those grounds, and on the further ground this evidence is completely irrelevant and immaterial, I suggest that what counsel is attempting to bring out from Mr. Geisking is inadmissible.

Mr. Burr:

Do you want to say anything else, Crampton?

Mr. Harris:

As I understand, we, being the objectors, have the opening and close.

Mr. Burr:

I haven't had an opportunity to reply to this gentleman over here, and I certainly want that opportunity.

Mr. Harris:

Suppose you reply to him and I will close.

Mr. Burr:

That is all right.

The gentleman representing the Administrator, I submit to the Court, is as far wrong in the reasons given for his objections as were the grounds given by Mr. Harris for his objections.

Now, what does he say? He says the Administrator has no power to make any binding opinion. Of course he hasn't, that is, no power to establish the law, but these contracts remain subject to his control. These contracts are contracts made by other departments of the government in which they, in effect, put the Administrator in charge of the enforcement of the provisions of the contracts, and I don't care whether he is operating under the Walsh-Healey Act or he is operating under the Wage and Hour Act,—they put the Administrator, in effect, as the supreme tribunal to determine whether or not we are complying, not with the statute or the law, but with his interpretation of the law. The departments of the government go to him for interpretation and enforcement, not of the law, but of his interpretation of the law; that

goes to these parties with whom we had our contracts. They might—suppose we had relied on what we conceived the law to be, and had refused on May 1st to go to the portal to portal. The very minute we did it, with the Administrator's ruling outstanding, these parties with whom we had these valuable contracts, under the terms of those contracts, had the right to say to us, "You have violated the provisions of those contracts which said you should do those things that you are not doing," and in addition to that they would have had the right to put the penalty upon us. Now, it doesn't say we shall comply with the provisions of Section 7. That isn't at all what it says.

"This stipulation with respect to minimum wages shall apply only to persons and contractors relating to such industries as the government has contracts with."

Then it says that:

"No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contracts shall be permitted to work in excess of eight hours in any one day, or in excess of forty hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor."

In other words, being subject to the supervision of the Administrator, the minute we fail to comply with the Administrator's rulings, whether they are legal or not legal, we become subject to the provisions of these contracts. There couldn't be any contest on it.

Mr. All:

It would be too late for any contest.

Mr. All:

Mr. All says that any contest would be too late. That is true of the holding companies provisions.

The people who have had any experience with the Administration of this law and related matters every now and then learn a thing or two, but the attorney for the Administrator,—well enough in a way,—he gets up and solemnly says the Administrator doesn't make the law, he just gives his opinion of what it is, but there is evidence that when he gives his opinion and you don't comply with that opinion you do so at the risk of threats and penalties that are almost insurmountable. You do it under the threat of the invocation of the hot goods provision. He has a right to go into Court and enjoin you from shipping a piece of pig iron out of the State under the hot goods provision. He says the Courts will decide. How long will it take the Courts to decide? Maybe months and years. No industry can afford to take the chance.

Not only is that true generally, but in these particular matters that are involved here, where we have the pleadings in this case as they are, is Your Honor going to strip the pleadings by objections to testimony? The pleadings allege these contracts. There has never been any agreement to take these contracts out of this case for this purpose. What we agreed to take out was the question of costs and profits. We are not asking about any question of profits and costs.

What we are here to show is as long as these provisions of these contracts remain in force, we are subject to losing our contracts and to liquidated damages.

Mr. Harris:

If the Court please, there is an ancient maxim of law that every man is presumed to know the law, and when they make contracts they make them in the light of existing law, and they can't be heard to influence the Court's

interpretation of the law by saying that after that law was passed I went out and made a contract which I expected to make a profit out of. The Court doesn't determine the validity of the application of a law by the private arrangements of individuals engaged in business.

Now, these contracts haven't been submitted to the Administrator for interpretation. He doesn't interpret their contracts. We are not sitting here to determine whether the Administrator's ruling was a wise ruling or an unwise ruling. This is not an appeal from an order of an Administrator. This is a Court proceeding to determine the meaning of a law, and whether that law has been complied with up to May 1, 1941.

Now, even with the Walsh-Healey Act, which he talks about, that is not a self-executing provision about hot goods. If they claim they were shipping hot goods in interstate commerce, they would have to go to a Court; it isn't something a man just says you have hot goods and I therefore demand so and so of you. They would have to go to a Court and determine whether they were shipping goods,—hot goods in interstate commerce, so I respectfully submit, if the Court please, that what he is doing or what he is trying to do is to put in his private arrangements, and to say they are defense contracts doesn't give them any magic. They made those contracts because they expected to make a profit, and they are engaged in business for the purpose of making a profit. We don't know whether they are making ten percent, whether they are making twelve percent or whether they are making forty percent. We could never tell how much money they were making until we went into all the costs of them. We don't know whether it would still be profitable and very profitable to pay these miners overtime according to the counterclaims. For all we know, the company could pay them their overtime and still have a ten or twelve or twenty percent profit, so I say that by no

stretch of the imagination can the Court be limited in its construction of a law, and in the application of a law, by private agreements entered into after the law was passed.

Mr. Burr:
May I ask you one question?

Mr. Harris:
I respectfully submit that none of those contracts, whether you call them defense contracts or something else, are admissible.

Mr. Burr:
I will ask you one question, Crampton. You have the close. You don't deny my statement of the law that the Supreme Court has held that the government in making contracts has the right to lay down any restriction it pleases, whether it is required by the law or not?

Mr. Harris:
I don't know what the particular case is to which you refer, but in any private agreement the parties have a right to enter into any agreement they please that is not against the law.

Mr. Burr:
Yes, but—

The Court:
I am going to sustain the objection.

Mr. Burr:
Let's see about the record. It is understood these contracts have been offered—

The Court:
Yes, sir.

Mr. Burr:
With these provisions in them, separately and severally—

The Court:
Yes, sir.

Mr. Burr:
—and the provisions are the same as the allegations set out in the complaint, and we have an exception,—separate and several exception?

The Court:
I will give you a separate and several exception as to each contract you offer to introduce.

Mr. Burr:
And those provisions?

The Court:
Yes, sir.

Mr. Burr:
Do you want me to set them out now?

The Court:
I don't think it is necessary.

Mr. Harris:
I think we should have a list of what contracts he is going to offer. I don't know—

The Court:

I don't think it is material testimony. I don't think it is material testimony called for by—I don't think it is admissible.

Mr. Burr

What I want to know is if I have got my exceptions, Your Honor.

The Court:

Well, you had better make them separately.

Mr. Harris:

As I understand, he is now going to offer—we have our objection and Your Honor has sustained our objection, and he is offering—

The Court:

Each one of them, separately and severally.

Mr. Harris:

He is merely identifying them to make a record?

Mr. Burr:

The first one I offer—

The Court:

Yes, sir. You can consider the ruling has been made or not as you like.

Mr. Burr:

I don't know I exactly understand yet. All I am interested in is getting my exception properly in the record.

The Court:

Whichever way you like, you go ahead.

Mr. Burr:

Well, we offer first the contract of the Tennessee Company with the Gulf Shipbuilding Company dated January 23, 1941.

Mr. Harris:

And we interpose all objections Mr. Brodie and I have—

The Court:

Objection sustained.

Mr. Burr:

We offer next the contract with the War Department, made on January 20, 1941.

Mr. Harris:

And we interpose the same objection.

Mr. Burr:

Now, can't we—isn't it understood he has an objection to each one and I have an exception to each one?

Mr. Harris:

All right.

Mr. Brodie:

That applies to the Administrator also.

The Court:

Yes, sir, and the Court sustains the objection and you have an exception.

Mr. Burr:

The next one is with the United States Agricultural Department, dated September 9, 1940.

The next one is contract identified as Number W-Ord.,—which is Ordance,—380, dated May 24, 1940.

The Court:
Sustained.

Mr. Burr:
Now, I believe that is enough of them, Your Honor, to raise the question without offering all the rest of them. Each plaintiff, separately and severally, offers these, and states that on account of the Court's ruling that we are not going through the formality of offering the rest of them.

The Court:
In other words, each of the plaintiffs makes the same offer you have?

Mr. Burr:
Yes, sir.

The Court:
And the Court sustains the objection.

Mr. Harris:
For the benefit of the record also, Judge, he is building up there as to the other purposes, we offer the additional objection that the Sloss Company couldn't possibly be hindered by a defense contract the T. C. I. had.

The Court:
I sustain the objection—

Mr. Harris:
It couldn't possibly be relevant to the Sloss Company or the Republic Corporation.

The Court:
The objection is on the evidence. He is perfecting his record.

Mr. Burr:

Now, I offer—our exception goes separately and severally as to each of the original defendants, and separately and severally for the intervener defendants, because that is the one where I am most confident this evidence is admissible.

The Court:

Then, of course, you have your—the—

Mr. Burr:

In other words, we offer them as against all defendants.

The Court:

Yes.

Mr. Burr:

And we have our exception.

The Court:

Yes.

Mr. Burr:

Then we offer them as to Defendant Fleming, as to him alone, and the government objects, I understand.

Mr. Brodie:

Yes, sir.

The Court:

The objection is sustained.

Mr. Burr:

And we have our exception.

The Court:

Just a minute. This is a matter of the indulgence of the Court.

Mr. Burr:
We will be glad to give you all the time you want.

The Court:
I have a matter set in chambers, Birmingham Clay Products. I will be back shortly,—Not long, I hope.

Mr. Burr:
Ten minutes, fifteen minutes?

The Court:
Adjourn for fifteen minutes.

(Thereupon proceedings were in recess from 10:05 A. M., to 10:30 A. M., at which time proceedings were resumed as follows:)

The Court:
All right, proceed.

Mr. Burr:
Come around, Mr. Hassler. We will examine him next.

The Court:
Who will you have next, Mr. Burr?

Mr. Burr:
Mr. Hassler.

1944 J. M. HASSLER, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
How do you spell your name?

The Witness:
H-a-s-s-l-e-r.

The Court:
What are your initials?

The Witness:
J. M.

The Court:
H. M.?

Mr. Burr:
J. M.

(By Mr. Burr):
Q. John, keep your voice up so we can hear you.
A. Yes, sir.
Q. This is J. M. Hassler?
A. Yes, sir.
Q. How old are you, John?
A. 43.
Q. Are you in the employment, at the present time, of the Republic Steel Corporation?
A. Yes, sir.
Q. That used to be the Republic Steel & Iron—
A. Republic Steel & Iron Company.
Q. Republic Steel & Iron Company?
A. Yes, sir.
Q. What position do you hold with them at the present time?
A. I am chief engineer for the Birmingham district.
Q. How long have you been chief engineer?
A. Since January, '30; January 1, 1930.
Q. When did you first get into any business connected with engineering and mining after you left school, approximately?

A. About 1922.

Q. And where was your first employment?

A. My first mining employment was prior to that, while I was going to school, with the Tennessee Company.

Q. I see.

A. Number 4 mines.

Q. Is Number 4 mine a coal mine or an iron mine?

A. Coal mine.

Q. Number 4, I believe, is located at Pratt City,—at Wylam?

A. Yes, sir. It is about at the end of the steel mill, the Ensley Steel Mill.

Q. And after that, where was your next work? I will take your work instead of anything else. Your first work was with the Tennessee Company?

A. Yes, sir.

Q. And your next work?

A. With the Semet-Solvay Company at Ensley.

Q. What did you do there?

A. Plant engineer at Ensley.

Q. Then where did you go?

A. I went to Syracuse, New York, with the Semet-Solvay Company.

Q. What was your capacity there?

A. Plant engineer.

Q. Then what did you do?

A. I stayed there about two years and then went down to New York City with the Semet-Solvay Engineering Corporation.

Q. What was your job there?

A. Chief draftsman.

Q. Then where did you go?

A. I went to Buffalo with the same company.

Q. Was that mining work?

A. No, sir; that was coke plant construction.

Q. Then where did you go?

A. I went with the Republic Company in 1929.

Q. While you were working for the Semet-Solvay Company, did you do any work in connection with mining?

A. Yes, sir.

Q. What was it?

A. We had a coal mine at Littleton and I was engineer of that mine.

Q. Did that work require you to go in and out of the mine?

A. Yes, sir.

Q. Then you went with the Republic Company in 1929?

A. Yes, sir.

Q. And became chief engineer in 1930?

A. Yes, sir.

Q. What sort of work did you do prior to becoming chief engineer?

A. I was plant engineer at the Thomas works.

Q. Have you also, during this time, and if so, what part of the time, had charge of the Republic Company's employee relations?

A. Yes, sir, since about June, 1933. I also have the title of superintendent of industrial relations.

Q. That work is under your supervision also?

A. Yes, sir.

Q. And has been for how long?

A. Since 1933, in June.

Q. Now, since you have been with the company, we will say, as chief engineer, did you have supervision as chief engineer of both coal and ore properties?

A. Yes, sir, and also the plants.

Q. Also the plants?

A. Yes, sir.

Q. Now, from the time you went with them up until October 24, 1938, what ore mines were under your supervision as chief engineer?

A. Well, the two mines at Raimund, Raimund Number 1 and Number 2, and Spaulding and the Shannon mine that is idle.

Q. The Shannon mine is the mine over in the valley where they sank down a vertical shaft?

A. Yes, sir; it is almost vertical.

Q. That has not been in operation for some time, I believe?

A. No.

Q. Was that an ore mine, the Shannon mine?

A. Yes, sir.

Q. Do you recall what period of years it was in operation?

A. Yes, sir; it operated from about 1925 on up until about 1932.

Q. The mines at Raimund and Spaulding you mentioned, the ore mines, are the same mines you heard Mr. Norman Thompson, Superintendent of Ore Mines, testify about the other day?

A. Yes, sir, they are the same mines.

Q. Were the conditions he described there substantially correct?

Mr. Harris:
We object.

Mr. Burr:
I am just trying to save time, Your Honor.

The Court:
I will overrule the objection.

Mr. Burr:
I don't see any use of going over the same mines with him again.

Q. Was his testimony correct?

A. Yes, sir.

Q. I wish you would give me the names or numbers of the company's coal mines during the period of time we are talking about.

Mr. Harris:

So far as coal mines go, they certainly have nothing to do with this case.

Mr. Burr:

Your Honor can't tell, of course, until you hear something about them.

The Court:

I will overrule the objection.

Mr. Burr:

When we get to the right point I will want Your Honor to hear us.

Q. How many coal mines have they had, Mr. Hassler?

A. Sayreton 1 and Sayreton 2, and Virginia and Warner out at Republic and the Altoona mine. Virginia and the Republic and Altona mines are not now being operated.

Q. Suppose we get rid of the ones that haven't been operated. Take Virginia Mines; when was that last operated?

A. That was last operated in 1932 and it is being rehabilitated now for operation.

Q. Is that a slope mine?

A. Yes, sir.

Q. Where is that mine located?

A. It is—

Q. How far is it from your nearest ore mine property?

A. It is approximately—about eight miles from Raimund.

Q. About eight miles from Raimund?

A. And seven miles southwest from Bessemer, about seven miles.

Q. All right, sir: Your Raimund mine—What were your other coal mines? You mentioned Virginia.

A. Sayreton.

Q. Sayreton. How many mines have you at Sayreton?

A. There are two.

Q. You understand, I am talking about the period I have asked you about,—

A. Yes, sir.

Q. October 24, 1938, up to the present time?

A. Yes, sir.

Q. What are the mines at Sayreton?

A. Number 1 and Number 2.

Q. What about the mines at Altoona?

A. They are still operated on a wagon basis.

Q. Are they slope mines or drift mines?

A. They are drift.

Q. Sayreton are slopes?

A. Yes, sir, both slopes.

Q. You mentioned the Warner mine?

A. Yes, sir.

Q. Is it still being operated?

A. Being operated to a small extent.

Q. Where is it?

A. Out on Cat Mountain towards Blossburg.

Q. Is that a slope mine or drift mine?

A. Slope mine.

Q. Is it still in operation?

A. Yes, sir.

Q. How far is Sayreton from your ore mining operations?

A. You mean the nearest point?

Q. Yes, sir.

A. That would be Spaulding,—probably ten to eleven miles straight across the valley.

Q. Now, confining our questions for the present to the Sayreton mines as illustrative of the slope mine operations, have they or not been in operation ever since you have been with the company?

A. Yes, sir.

Mr. Harris:
May I have an objection to each one of these questions—

Mr. Burr:
Yes, sir; satisfactory to us, Judge.

Mr. Harris:
With reference to coal mines?

The Court:
Yes, sir.

Mr. Brodie:
And that applies also to the Administrator?

The Court:
Yes, sir.

Q. Have you a map of the Sayreton mines?
A. Yes, sir.
Q. Will you put it on the Board? Let it be marked.

The Clerk:
Exhibit Number 17.

Mr. Harris:
As to each exhibit dealing with coal mines, we—

Mr. Burr:
Perfectly all right with us for them to have an objection to each question without making it.

The Court:
What exhibit is that?

The Clerk:
Republic Exhibit Number 17.

(Thereupon a map of Sayreton Mines Numbers 1 and 2 was marked Republic Exhibit No. 17.)

The Court:

I am not going into testimony on coal mines unless it is shown these mines are operated in a similar manner to ore mines.

Mr. Burr:

That is what I am preparing to do right now.

The Court:

That is certainly as far as I can go.

Mr. Burr:

Yes, sir.

Mr. Harris:

Of course, it is our theory, Your Honor, that the coal mines do not shed any light on the legal question or the factual question here any more than the operation of a shoe factory or oil mill or rolling mill or any one of the thousand and one industries in America because the law applies to and was passed not merely for ore mines, but for the entire picture of American Industry.

Mr. Burr:

Of course, we are interested here with underground mines. That is what we are interested in. We propose to show—

The Court:

Well, the opinion has not been rendered on coal mines, has it?

Mr. Burr:

Well, no, sir, but as my friends have so often said, the opinion is not law.

The Court:
I know.

Mr. Burr:
Yes, sir. If Your Honor wants—

The Court:
As far as you are concerned now,—

Mr. Burr:
Yes, sir, but it shouldn't be—

The Court:
Portal to portal is not in effect in coal mines?

Mr. Burr:
Sir?

The Court:
Coal mines operate on face to face?

Mr. Burr:
They do at the present time, but as soon as you decide traveling time is chargeable, what is contracts between friends?
If Your Honor wants to hear that proposition discussed—

The Court:
I would rather hear it discussed at this time.

Mr. Burr:
All right, sir.

The Court:
You are objecting to it?

Mr. Harris:
Yes, sir, we are objecting to it.
I might let Mr. Brodie start the objection, and then Mr. Burr, and I will reply.

Mr. Burr:
I think Mr. All will want to be heard too.

The Court:
Yes, sir.

Mr. Harris:
All right; Mr. Brodie, you go ahead.

Mr. Burr:
Before Mr. Brodie starts, the way I want to present this matter is in connected form. I want to discuss every particular item which makes a holding on the evidence we want to offer on this subject necessary.

Mr. Brodie:
Shall I proceed?

The Court:
Yes, sir.

Mr. Burr:
And that will include the issue under the pleadings.

The Court:
All right.

Mr. Brodie:
If Your Honor please, the sole question here is not whether men are paid face to face or portal to portal or some variation of those two. The question is when a

miner's day's work starts and when it ends. That is the only question for Your Honor.

Whether the Administrator has held that face to face or portal to portal is the proper way of computing pay is of no materiality here because the question with which Your Honor is concerned is how many hours does a man work during a week, and if he works over forty hours during the week he is entitled to overtime. If he works less than forty hours during the week and his pay is above the minimum wage, then we have no concern with it because there has been no violation of the law. So that if in a particular industry, we will say, underground miners work four hours a day face to face and it takes them two hours to get from the portal to the face and then back from the face to the portal,—if the total pay they get for the week, for forty hours, is above twelve dollars a week, then there is no question. The Administrator might say that portal to portal is the proper method of payment, but the question is: Is a man paid the minimum wage for the hours worked, and is he paid overtime for hours worked in excess of forty hours per week?

It is the contention of the Administrator and it is the contention of the defendants represented by Colonel Harris and Judge Smith that the underground workers in these mines have not been paid overtime for hours worked in excess of the various maxima set out in Section 7, and that is the question for Your Honor to decide.

Portal to portal or face to face are really merely symbols, because they become important only in determining how many hours a day a man works.

Now, if these men when they enter the mine at the beginning of the week, and when they emerge from the mine at the end of the week are at work according to the interpretation Your Honor places upon the statute, for more than forty hours since October 24, 1940, or more than forty-two hours for the period from October 24, 1939,

to October 24, 1940, or for more than forty-four hours for the period of the first year of the operation of the Act, then they are entitled to overtime without regard to what has happened in another industry.

Now, for the sole purpose of this evidence relating to coal mines is to import here some sort of an estoppel against the Administrator. Now, at the proper time we will show Your Honor there can be no estoppel against the Administrator.

Mr. Burr:

That is not the purpose of it at all. I can correct you on that right now so you will not have any misunderstanding about it.

Mr. Brodie:

We have already stated it is our position, and has always been our position, that the Administrator's opinion is not binding upon the Court. The Administrator has never claimed the power to make a binding opinion. He nas said that, in his opinion, an underground ore miner is at work when he enters the mine.

Now, if from the time he enters the mine until the time he emerges from the mine the hours are in excess of forty, then, says the Administrator, and we think this is a proper interpretation of the Act,—the man is entitled to over time. If he is underground less than forty hours a week, then whether he is paid on a face to face basis or a portal to portal basis or hourly basis or shift basis or piece rate basis, as long as his pay is in excess of the minimum wage, then there has been no violation of law.

So, the sole question for Your Honor to decide is when do these ore miners start to work and when do they come under the control and supervision of their employers; when does the relationship of employer and employee attach and when does it end? That is the sole question

for Your Honor to decide without regard to what happens in coal mines where the hours are different. The face that in coal mines men are paid on a face to face basis is entirely immaterial, because coal contracts, as we all know provide for seven hours work per day, thirty-five hours a week, so that, unless the time between the portal and the face exceeds five hours a week since October 24, 1940, seven hours a week since October 24, 1939, or nine hours a week since October 24, 1938, then there is no problem with respect to coal and we are not trying the coal mines here, and for that reason I respectfully submit, Your Honor, that evidence respecting the practice of coal mines is immaterial, and if this evidence goes in it seems to me it would open the door to the admission of evidence respecting how many hours a coal miner spends underground from the time he enters the mouth or portal or collar of the mine until he emerges from there. And it is up to—then it would seem to me it would be up to Your Honor to decide whether the Act has been violated with respect to coal miners, something entirely remote and apart from these cases.

This case concerns these men, whether they are at work for more hours than the statute permits without the payment of overtime, and that is the sole issue.

Mr. Burr:

Will you hand me a glass of water, please, sir?

Mr. Brodie:

May I say one thing Mr. Cooper reminds me of?

The Court:

Yes, sir.

Mr. Brodie:

Your Honor has already ruled on a preliminary motion for documents and so forth that evidence respecting the coal mines is immaterial.

I submit that has become the law of the case for the purpose of this trial, and that any evidence now which is in contravention of Your Honor's ruling is a reversal of the law of the case and the theory upon which this case is being tried, and I respectfully submit that as an additional ground why this evidence should not be introduced.

The Court:
Go ahead.

Mr. Burr:
If Your Honor please, with reference to his last ground, this matter has never been discussed before the Court, and, of course, there is no such a thing as the law of the case until the case is over with.

The Court:
He probably means to say I am bound by that—

Mr. Burr:
Yes, sir, but Your Honor is not bound—

The Court:
—as a theory of the case.

Mr. Burr:
But Your Honor is not bound by it as the theory of the case. That was denied on the ground it was confidential information. Your Honor wouldn't let a ruling you made then interfere with your ruling now if it was incorrect, so I will not pay any attention to that.

Now, if it please the Court, it seems to me we have really, during a large portion of the trial of this case, gotten entirely away from the issue of the case. Certainly, if the statement made by opposing counsel is the issue in this case, why, I am lost or the issue is lost one. So,

I want first to go back and see what the issue in this case is.

Here are the questions that Your Honor has to answer, —that you are requested to answer:

"Did the Congress, in the enactment of Section 7 of the Act, intend that the work week should consist of the time, per se, actually spent by the underground employees of the plaintiffs working at and around their usual working places?

"(C) Did the Congress, in the enactment of Section 7 of the Act, intend that the work week of plaintiffs underground employees should include any portion of their time spent in being transported or walking to and from their usual working places, and while not engaged in any physical work or service for the plaintiffs?"

Now, that is what we are here for. We are not here to try the question of whether one mine had a different means of transportation from another; we are not here to try the question as to what kind of transportation one mine presented as against another; we are not here, in answering that question, to determine the question as to whether or not one mine has one practice about handling tools and another mine has another practice. Those are questions which may throw light and may not throw light on the main question. They are questions which will be decided long after we have gotten past the declaration of law which the Court has to make in this case. Now, there can't be any question about that being what is raised by the pleadings.

Now, I will read to you the answer, first, of the Smelters Union in that regard:

"For a further separate defense, these defendants allege that under the Fair Labor Standards Act of 1938 the work week for the employees of the plaintiff engaged in pro-

duction of goods for commerce includes all the time when a miner reports for duty as required at or near the collar or portal of the mine, and ends when such miner reaches the collar or portal of the mine at the end of the shift, and all of the time spent on the surface in obtaining and returning lamps, carbide and tools, and checking in and out."

Now, Your Honor will notice, of course, that they are claiming the law is just the opposite of what we are claiming the law is. We allege in our complaint that the work week does not include traveling time to and from the working place per se. We exclude from the question any time spent in active work. They come along and they say, "You are wrong; the work week includes all the time, without regard to conditions or circumstances, from the time the miner gets to the entrance of the mine until he comes back." So, that is the issue so far made by this complaint and this answer between myself and these gentlemen over here.

Now, what does the Intervener say?

"Intervener alleges that the proper interpretation—" Now, that is what we are getting at. Your Honor is interpreting Section 7.

"Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the opinion and report, a copy of which is annexed to plaintiff's petition as Exhibit A."

I will read that again:

"Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the opinion and report, a copy of which is annexed to plaintiff's petition as Exhibit A."

Your Honor will notice that the opinion of the Administrator, and it will be in evidence in this case,—it is bound to be,—before we get through, because if they don't see fit to defend it,—they have already alleged it is proper in their pleadings, and if they don't introduce it we will introduce it. Your Honor can consider it in evidence now.

Both answers of all parties claim that the proper interpretation of Section 7 is that whenever an underground miner in an ore mine,—I will show you why if it is in a ore mine it is bound to be in a coal mine,—that whenever an underground ore miner steps into his transportation here he is at work until he comes back out from that mine. It doesn't make any difference in answering this first question as to whether conditions are dangerous or not dangerous; it doesn't make any difference in answering that question as to whether they carry tools or don't carry tools; it does not make any difference whether, when the miner goes down into the mine, he rides in a skip or car or whether he walks or whether he rides in a skip or car that is air conditioned or has seats or cushions, or one that is built so there is not any possibility of him getting hurt and things of that sort because they are contending under this law that it was the intent and purpose of Congress in 1938 that evry time an ore miner got out from under the sunshine and traveled to his place, whether it became safe or unsafe, whether he walked or didn't walk, he was at work because he had passed the portal of the mine. That is the issue in this case.

Now, let's see what is relevant to show the intent of Congress. What does Section 7 say?

But before I pass to that, let me show Your Honor some of the rest of the pleadings in the case. Here are other averments. I am reading them consecutively.

"Otherwise stated, the plaintiff asserts that the Congress intended—" This is our averment of the complaint,

which they deny,—"the word 'workweek' to be construed as meaning the time actually spent by plaintiff's underground miners in or about their usual work places, and did not intend to include as a part of the 'workweek' the time spent by such underground employees in being transported or walking to and from the places where they actually work."

"It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, for the wages of underground ore miners to be computed and paid on the face to face basis."

"It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines,"—that is what I am prepared to prove,—"as well as in all other ore mines in Alabama, that underground ore miners should not have their wages computed or paid for the necessary time in going from and to the surface and to and from their underground working places."

"The same unvarying and continuous custom, as set forth in one and two above,"—that is what I have just read to Your Honor—"has for more than fifty years existed in all underground coal mining operations of the plaintiff and of all other coal operators in the State of Alabama."

"The plaintiff operates four underground coal mines,"—that is in the complaint—"and uses the coal and by-products thereof in the manufacture of its products. The operation in its coal mines,"—and that is what I have got Mr. Hassler on the stand to prove right now,—"insofar as the questions involved here are related and concerned, is in substance the same as its operations in its ore mines and limestone mine."

Now, don't forget, may it please the Court, that already the issue has been made and evidence offered without objection,—there may have been objection, but offered and admitted by the Court that the underground limestone mine there adjacent to these ore mines is involved in this case, and it is involved just as much as the ore mines are.

The complaint goes on: "The same unvarying and continuous custom, as set forth in one and two above,"—I read that paragraph.

"Plaintiffs allege that there can be, under conditions existing in the State of Alabama, no logical or possible differentiation between underground ore mines and underground coal mines, so far as the question under consideration is concerned."

It alleges again—

The Court:

Mr. Burr, has the administrator made a ruling on coal mines?

Mr. Burr:

Yes. I will get to that after a while,—yes, sir. That is another reason why it is absolutely admissible in this case.

Then the complaint alleges:

"Written contracts excuted between the plaintiffs and locals of the United Mine Workers of America, containing an exactly similar definition of the work day as meaning 'hours of work in or about the mines at the usual working places', have been in existence since, to-wit, May 2, 1934."

Other averments show that they have been in existence since 1898 in the State of Alabama in coal mines.

Now, let's get back and see why you can't keep the coal mines out of this case on the broad proposition of whether traveling time, per se, in mines, under Section 7, constitute a part of work.

I propose to show by Mr. Hassler and every witness that testifies, and there can't be any doubt about it, that conditions in ore mines and coal mines are substantially the same, just as we have alleged in the complaint; we propose to show that these coal mines are underground mines just like the ore mines; that the only difference between them, if any difference exists, is that in the coal mines the traveling time is longer than in the ore mines.

"Why," the government says, "what concern is that of yours? You have got a seven-hour day in the coal mines by contract."

In the first place, what is a contract as shown by the evidence in this case or by the contention of the defendants in this case? We have got a contract with just as much solemnity, signed by the national president of the union before this matter ever came up that it shall be working place to working place, but they say that contract can't repeal the law, and it can't, unless we can hereafter work in a question of waiver and estoppel that is not involved here.

Then, turn to your coal contracts,—seven hours a day. Why, may it please the Court, when I get through examining this witness and other witnesses the evidence will be uncontradicted that so much further do the miners in the coal mines walk that there is an overtime even when they don't work but seven hours at the face, and that has existed during all the period of this time, and just as sure as I am standing here, and Your Honor is sitting there, if this Court shall hold and the Appellate Court

should sustain the holdings, that traveling time per se in an underground mine, whether it be coal mines or limestone mines or the mines out in the west his opinion referred to, or gold or zinc or silver or any other metal,—just so long, if the Court should ever reach that conclusion that the traveling time per se is work time, without reference to the character or the mine, the kind of the mine, the length of the slope, the condition of the slope, why, if that ruling is ever made, where do we stand with our coal mines? Do you think we would want to bring these coal mines into this proposition if we thought they could be safely let out? It wouldn't be three days before the individual coal miners, acting through the same or different attorneys, with the intervener joining in, as he may do, if the opinion here involved is held to be correct, before they would be claiming against us that the Court has held that traveling time, per se, the time a man is in the mine has to be paid for and pay us. Then tell me they are not involved in this case and in this litigation.

The intent of Congress is what we are after here. On October 24, 1938, what did Congress intend when it enacted this law with this verbiage:

"No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce for a work week longer than—" at the present time forty hours.

Now, that is the thing Your Honor is construing. These gentlemen say, and the Administrator, strange to say, wants to join in that,—he wants to get as far away from his opinion as he can,—he can't leave it, no. These gentlemen say that word "workweek" means what? It doesn't mean carrying tools; it doesn't mean encountering danger; it means you have got to pay this time and a half for all this period of time for every man who went in

your mine, whether those mines were like they were out here at Spaulding, a short walk down, or like they were at Raimund, a mile down, or whether they are like they are at Sayreton, three or four miles down,—that is what you have got to pay them for.

Now, let's see what Congress intended. That is what we are interested in now. Every piece of evidence—We are not trying this case before a jury. We are trying to solve a difficult problem. Every piece of evidence that throws a particle of light on this issue is admissible, and will be admitted in evidence by Your Honor. You can't do otherwise. The coal mines are not only admissible in evidence, but more so than the ore mines. Can Your Honor find anything in that section about ore mines? Can Your Honor find anything in that section about coal mines? Can Your Honor find anything in that section about underground mines? Can Your Honor interpret the intent of Congress as it relates to the Tennessee Company or Republic Company or Sloss Company? That is not what you are here interpreting. You are here to interpret this Act and answer the question of whether or not traveling time per se is work. That is your question. Doesn't Your Honor know if Congress were legislating against underground ore mines as contrasted with the coal mines, it would have said so? If the Congress had intended a different rule to apply to underground ore mines because of different conditions, different means of transportation, different dangers, different carrying of tools or anything else under high heaven; if the Congress had intended to set apart the mines of the Tennessee Company and Sloss Company and Republic Corporation and say this law applies to them and you have got to pay your men for traveling, no matter where they travel to or under what conditions they travel,—if the Congress had intended that it would have said it.

When Your Honor gets further into this case and hears all the evidence, you will find out every time when that

question has been up for consideration by state legislatures and by Congress and by every department that has ruled on it,—every time it has been up for consideration, when the intention of Congress or legislatures was that coal mines shouldn't do certain things, they said it, or ore mines should do certain things, they said it, or other businesses shouldn't do certain things, they said it. Nothing of that sort is said in this case. You can't find any humanitarian or sociological considerations as support for this part of the law. Congress didn't say that you fellows down there in the Alabama ore mines or in the West can't work men in the mines because it is against their health or endangering their safety. No, no, they didn't say that. They said just the opposite,—You can work them just as long as you please as long as you pay them time and a half for overtime.

Your Honor has to answer the presented question; you have got to determine what the Congress meant, and you can't answer it by saying that the work week in the Tennessee Company's ore mines is entirely different from the—

The Court:

Why do you want to go into the coal mines?

Mr. Burr:

To find the intent of Congress in passing the law.

The Court:

Has the Administrator made a ruling on coal mines?

Mr. Burr:

The Administrator has not made an authoritative ruling on anything.

The Court:

I know, but—

Mr. Burr:

Yes, sir, he has ruled in coal mines it is on a face to face basis. He is right there, just as he is wrong here, and that is why we want to go into the coal mines.

Getting back to the intention of Congress when they passed this law in October, 1938, the decisions hold if there is any ambiguity in the word "workweek" you have to look to what the conditions were at that time. All right. What were the conditions at that time?

As we expect to prove by this evidence we will offer later,—In the first place, we propose to show at that time, if you take it on a quantity basis, that, in accordance with the figures of the Bureau of Mines which have been identified under the offer of proof, that there were working at that time, in 1938, in Alabama, not quite four thousand ore miners and over 20,000 coal miners in underground mines. Now, does Your Honor think that they intended to put those 4000 coal miners on a different basis from the 20,000 ore miners?

The Court:

It is the other way.

Mr. Burr:

Yes, sir, it is the other way, just the opposite,—4000 ore miners and 20,000 coal miners.

If we take it on production it is even stronger. If we go from the Alabama mines to all over the United States, and that is where you have got to go to find the intent of Congress, you will find these unusual figures that appear in these government publications, and I want to give them to Your Honor. They show in 1938 there were coal miners in the underground bituminous coal mines of the United States a total of 441,331, while the number employes in ore mines was 19,778. Now, did Congress legislate for those ore miners and didn't legislate for the 441,000—didn't Congress, when the Senators and Repre-

sentatives from all those States, who knew of that tremendous number of underground coal miners,—if they had intended to make this difference between ore mines and coal mines, wouldn't they have said so in the Act? Not only that, but isn't it a reasonable and inescapable conclusion that Congress would never have passed that law if it had intended to earthquake the conditions existing in the ore and coal mines and other underground mines of the United States and not say so in express language that they knew how to use? If you follow that out to your next step, if you follow it to the underground anthracite coal mines under these records here, you will find that the proportion of miners in underground coal workings increase with even greater proportion.

So, I say that anything that shows the exact condition that existed when Congress passed this law is bound to be relevant evidence in this case, and we are proposing to show by the government publications that at that time the underground coal miners engaged in the production of coal out numbered the ore miners engaged in the production of iron ore in the proportion I have shown Your Honor, and if that is true, the answer is inescapable that Congress didn't intend to create a condition where every coal miner in the United States,—nearly a half million of them, because that would have to be the condition if Your Honor ruled according to their contention here that traveling per se is work time,—Congress didn't intend every coal miner in the United States, a half million of them, notwithstanding custom and contract, should be entitled under this act, to be paid as a part of their work for traveling time they spent in going to and from their working places.

Not only are those facts true, as shown by this evidence, but what else happened? Your Honor already knows here, from the testimony that under the N. R. A. a code was adopted for the bituminous coal industry and that there was not a code adopted for the ore industry. The

evidence is undisputed here that as to the bituminous coal mines we are talking about, showing again the complete tie-up of the ore and coal mines in this industry,—the exhibits are there before Your Honor that in 1933 when the union made its first proposal that they be granted half and half traveling time, what was the response.

The proposal of the Union was that,

"In view of the fact the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on out time and to leave on the company's time."

The answer of the company to that was this: —That is the first one I want to get in, the one in—Wait just a minute. There is one in front of this. It will be exhibit 5. This has the same thing in a different form, but I want to start with the first one.

The suggestion was that the men enter the mines on their own time and come out on company time; suggestion for an eight hour day and forty hour work week, and suggestion that rates of pay be increased accordingly.

Here is the answer:

"These three suggestions are considered as one since they can be answered as such. The code adopted for coal mining is being followed very closely by this company in connection with its ore mining operations, and that code provides for eight hours of work at the usual working place, exclusive of the lunch period, for a forty hour week and for certain wage scales. While we do not propose the adoption of identical wage scales at the ore mines as those of coal mines, proper differentials are being maintained and adjustments have been made to insure a fair wage to each employee."

So Your Honor sees there that as far back as 1933, following the adoption of the bituminous coal code, that the union itself, when it presented this question, was told, and nothing further was heard from it, that we are following as closely as we can the coal code in reference to the operations in our mines.

How close did they follow it?

Another item of evidence we expect to put in evidence is the Code of Fair Competition for the Bituminous Coal Industry, as approved on September 18, 1933, by President Roosevelt.

Now, mind you, this is what Congress knew about it when it passed this law. The President said this in approving this code. After reciting the application having been made, he goes ahead and says:

"* * * Having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of section 3 of the said Act have been met;

"Now, therefore, I, Franklin D. Roosevelt,—" and then he goes on and approves it as made and as submitted by the Administrator.

Title I that he says has been complied with, one of the principal provisions of that title,—there were two; one was 7 (a) which Your Honor will recall related to bargaining rights, which is not involved here, and the other one is the part relating to maximum hours, and President Roosevelt says, "I find that that code complies with the maximum hour requirements,"—the same sort of language you have got to consider here under Section 7 of this Act, and what did the Code that he approved contain?

"Seven hours of labor shall constitute a day's work—" I am reading from the Code, the maximum hours of labor,—"and this means"—traveling time? No, sir, "—and

this means seven hours of work at the usual working places for all classes of labor, exclusive of the lunch period."

So, I say, may it please the Court, that not only did Congress, when it passed this all inclusive law, including coal mines and ore mines and all other kinds of mines and all industries,—not only did it have before it at that time as evidencing its intent the undisputed facts which we are presenting here,—I don't think they will be disputed; they can't be disputed,—the undisputed facts that both in ore mines and coal mines, and, for that matter, in the underground metal mines, every underground mine in the United States at that time, we will show before we get through with this case, and prove it by their own testimony, that with the exception of three—I want Your Honor to catch this and remember it,—that with the exception of three western states, Utah, Arizona and Nevada, where the legislatures passed laws where they said in plain words what Congress hasn't said here, where they said that a man's labor begins when a man enters the mine and ends when he comes out,—that with the exception of those three states,—none of which mine any iron ore or coal,—with the exception of those three states, and as this testimony will show taken by the Administrator when we didn't, and with the exception of eight small contracts made by the Smelters Union in that section of the country, that from one end of this country to the other, from Alaska down through Alabama, from the great coal producing states of New Jersey, Pennsylvania and New York, on out through the Lake Superior Region to the far west, that with the exception of those three states and those few contracts, that not only had the custom, since the memory of man runneth not to the contrary, but the actual contracts with the labor unions, ore, gold, silver, limestone, coal,—that not one, with the exceptions I have mentioned, was ever on this portal to portal basis.

Now, we propose to show in reference to the coal mines that that has been true, they have formulated the custom that has been adopted—Your Honor remembers these exhibits,—that has gone into every one of these contracts that have been signed up until April of this year,—every one of them. You can get them and put them down side by side, and you will find that the definition of the work day is just as put in this bituminous coal code and as approved by the President of the United States.

We propose further to show by the evidence that has been identified for introduction in this case, subject to objection for relevancy,—we propose to show that previous to October 24, 1938, this question had arisen before a number of mediation boards. During the presidency of President Wilson—

The Court:

You are getting off, aren't you?

Mr. Burr:

No, sir, I am not getting off. I am getting on. It is the first time we have been on since we started this case.

I am showing the facts that existed at the time Congress passed the law, and you have got to consider those facts. You have got to consider the question whether the Congress, in enacting Section 7 of this Act, enacted it to apply to the Alabama ore mines or to all mines. Why, if Your Honor please, nobody has questioned that until the last two or three days,—since this case started. It is admitted by the conduct of the government in this case; it is admitted by the decisions, the rulings, or the interpretations or the opinions of the Administrator in this case. You can't find any possible justification for eliminating the coal mines from this broad question, because Congress was legislating just as much for the coal mines as it was for the ore mines.

Now, it is our contention, if it please the Court, that in addition to this reason, as showing the intent of Congress when the Act was passed, that this evidence is admissible for the purpose of showing, if the Act is ambiguous, the construction of the parties after the Act was passed.

Now, we were just as much parties, in our coal mine contracts, to the construction of the Act as we were in our ore mine contracts. We propose to show that in the coal mines of Alabama,—in these coal mines,—since 1898, at all time, whether the union was in control or the companies were in control or neither party was in control, that since 1898 every contract has followed the language which the Code followed under President Roosevelt's approval,—the Code of 1933; that over that entire period of time the face to face definition of the day's work has not only been recognized, but has been carried into the contracts.

Now, we say this evidence is admissible as showing the construction placed upon the Act by the parties after the Act was passed if there is any ambiguity about it. We say these same coal mines and these same ore mines, and those of the United States, have gone right along until about the month of March, 1941, operating on the face to face basis.

We propose to offer in evidence here, along with the other documentary testimony, the joint request of the United Mine Workers of America and the coal operators of the Appalachian field, which has been given publicity, as admitted by this pre-trial statement here as having been given publicity, under which they went to the Administrator and asked for an interpretation of this law, and I would like to read Your Honor what this statement says, and we are prepared to prove it if there is any dispute about it. There can't be any dispute, because the Administrator gave it out.

Here is what this joint statement says, among other things:

"The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time, and covers within its general provisions myriad wage rates, conditions of work and hours of employment. This agreement, with its 23 supplemental agreements, constitutes a whole document. In these conferences, of course, hours of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitutes the heart of any such agreement. In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside day rate in the North is $.857 per hour, and in the South it is $.80 per hour. The underground workers are paid on this basis, with maximum rates for mobile loading machine operators, approximately $1.09 per hour. In addition, the agreement provides, 'work by mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for at the rate of time and one-half.' It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years"—and so it has been in Alabama,—"and is the result of collective bargaining in its complete sense.

"There are many reasons why the provisions as to working time has been set out as provided by this agreement."

Now, I want Your Honor to listen to this and see if you can draw any distinction. You can't. It is evidence you are entitled to have.

"The impracticability of measuring time by any other method."—I am skimming over the other parts of the documents. Your Honor will have the document before you,—"is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places are, of course, close by and near to the opening of the mines."

Isn't that the undisputed evidence?

"In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them.

Isn't that true about the ore mines? Isn't that true about the Spaulding Mine?

Mr. Harris:
Judge, if I may interrupt,—

Mr. Burr:
Yes, sir.

Mr. Harris:
It seems to me he is, in effect, introducing his evidence and reading it to the Court rather than—

Mr. Burr:
Your Honor said you would let me show what we propose to put in.

The Court:
I thought that a while ago, but I will let him go ahead.

Mr. Burr:
I am reading this because it is a statement of the Administrator.

The Court:
If you quote everything you have got, we will never get through.

Mr. Burr:
I don't think Your Honor would want to rule on this without you knew the whole situation.

The Court:
I don't.

Mr. Burr:
That is what I am trying to give to Your Honor, what the whole situation is.

The Court:
All right; go ahead.

Mr. Burr:
I will read some, and call Your Honor's attention that what I am reading is the statement made by the Appalachian operators and the Union requesting the face to face ruling.

"But as mines grow older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provisions to be made for transportation of the men over long distances to their working places. This is usually provided by what is known in the industry as

'mantrips'. These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working places throughout the mine, and these trips are also scheduled to leave the inside of the mine when the day's work is done, at the conclusion of the seven hour period of work at the working places.

"Among other provisions of the agreement, there is provided a time for starting the day's work, and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting time at the various collieries. The agreement provides for certain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period."

Now, if Your Honor pleases, if you change that and use the words "ore mines" instead of "coal mines", and change the words "seven hours" to "eight hours", you have got identically the same proposition we have got here.

Now, following the presentation of that joint request, and after giving it consideration, the Administrator made this ruling:

"The second administrative determination announced by Colonel Fleming today involved the question of determining the number of hours worked by miners in the bituminous coal mining industries.

"Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working

time, which represents the prevailing customs and practices in the particular industry, and are supported by a long history of bona fide collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry; Colonel Fleming announced the practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

So there, if Your Honor pleases—And the same thing is followed in the address that will be offered in evidence by the Administrator, which is admitted as having been prepared by him for delivery before the American Mining Congress on Wednesday, September 18, 1940.

So, if Your Honor looks at the history of the matter, which has to be necessarily looked at in arriving at the intent of Congress, before the Act, what have you got? You have got section 7 applying to all mines; you have got Congress knowing at that time that in the bituminous coal industry, the practice and custom, traditional and universal, had been on the face to face basis; you have got the fact that the President and the Code Commissioner, when they had to set down and define what a work day was, used the exact language that is in all these contracts,—it is work at the face in an underground mine; you have got the fact, without dispute, as these documents show, that the number affected by the law in coal mines was

overwhelmingly larger than in the ore mines; you have got the fact that in coal mines the traditional practice had been on the face to face basis; you have all those facts I have mentioned in considering this question.

Then, if you go on the other side of that, you have got the construction made by the Administrator himself, which, under the decisions, is entitled to weight, that in bituminous coal mines it is on the face to face basis.

Now, to get down to the local situation, what do we propose to prove by Mr. Hassler and, with Your Honor's permission, by the other witnesses in this case? We propose to show that these coal mines and ore mines are almost contiguous to each other in the sense of distance. The testimony already here shows that this mine, as I recall—is this the one that is eight or twelve miles,—Sayreton,—

The Witness:

Eight miles.

Mr. Burr:

Eight miles from these underground ore mines. We propose to show that the situation is exactly the same as far as transportation is concerned, and that is what Your Honor has got to answer in this case. We propose to show that the slopes go down in the same way, that they go down for longer distances than in the ore mines; that they turn right and left into headings just as they do in the ore mines, that working places are turned off from the headings just as they are in the ore mines, and we propose to show that being true that every reference to this is most material on the question Your Honor has got under consideration.

You can't confine this to ore mines; you couldn't eliminate limestone mines; you can't eliminate the coal mines because we all know when Your Honor answers that question that you have got before you today for consideration when this case is over, you are going to have to say wheth-

er traveling per se in underground mines is in and of itself a part of the day's work. That is what the Administrator's opinion, which is going to be before you, places it on. True, he eliminates coal mines, he confines it to metal mines, but did the Congress eliminate coal mines when it passed the law? Can anyone with any logical reasoning say it is right to eliminate the coal mines, a mine in exactly the same condition, and include in the decision, as the Administrator does, the gold and silver and other nonferrous mines out in the West,—in the far west?

Now, considering the internal conditions in the mines, and there seems to be some feeling that going into the coal mines will go into that kind of evidence,—that evidence on this question we are considering has no material bearing, as I see it myself, at all for this reason: The question that Your Honor is going to answer is whether or not traveling time per se is a part of the day's work. When that question is answered, why, we shall have no difficulty with the other questions involved.

After it is determined—after that question has been answered, that traveling time is not, per se, a part of the work time, but it is also shown, or afterwards shown or proven that the men did do actual work, part of them, while they were traveling or walking to and from, or carrying tools,—if that becomes an issue in this case, why, that is a matter between the individual person and the company and the company owes them for that time, not because it was traveling time, but because it was actual work, if it amounts to actual work under the evidence as afterwards produced.

Why, under the testimony as now produced, there are hundreds and thousands of these underground employees who never carried any tools, and that is in reference to a certain part of the productive people. The pleadings in this case and the Administrator's opinion answers that question in this way, if Your Honor will refer again both to the pleadings and the opinion. It says that all the time

—after saying the traveling time per se is payable as part of the work time, it then concludes, "the work day also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out."

Take the evidence in reference to the Muscoda mines, for illustration: Under that part of the opinion, if it is work, and it is,—if before they get to their working places, on the surface these men fill requisitions for material over here before they go to the entrance of the mine and carry that material to the entrance of the mine, then, that time, if it is work time, is covered by the language of the opinion which says, "The aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools." Then, by the same token, and applying the same measuring rod, if traveling time is not per se work, but if, while in the mines, and provided they work more than eight hours,—if in addition to the eight hours work at the face any individuals do additional work by carrying tools or any other sort of work, why, then, they are, of course, entitled to payment for that work additionally done and actually done, but that doesn't mean that you can draw a line here at the portal of the mine and say that everybody that passes that line, whether he does a lick of work or not, is to be paid and is to be paid whether he goes down a short distance or a long distance, or whether he carries tools or doesn't carry tools, or whether it is safe or unsafe, and regardless of what kind of passage way is provided for him to walk on, or regardless of the character of skip provided for him to ride in.

What this Court and what the Appellate Court is going to answer is the question of traveling time per se. Does the time of every miner who gets down in that skip start here? Why does it start here rather than at the bath house? Why should it not start where requisitions are issued outside? Why shouldn't it be a general rule? You

are not asked to interpret this as to one particular mine; you are asked to interpret it as to all. If you say travel time per se is a part of the work day, it is a part of the work day no matter how that man travels or the distance he travels. That is establishing the construction of that law.

Doesn't Your Honor see where that puts us on that kind of a construction? If we are right on that construction—if we are right, why, they when Tom Jones steps out here at Spaulding, for instance, and takes less than five minutes to go to his place of work, without being transported at all, and when Tom Jones is a head miner, or somebody else, or a mechanic that never touches a tool or does a lick of work until he gets down to the place where his work starts, why, certainly Tom Jones is not entitled to be paid if we are right and Congress' intent is correct. As shown by the history, he is not entitled to be paid. You can't put it on the hardship of the travel for two reasons. One is the hardship of the travel is necessarily involved in the wage scale that is made at the bottom. Here we will show you before we get through in this case, in the ore mines, the men make higher rates of wages than they do in the coal mines where they are making as high as 90 cents to $1.00 an hour under wages negotiated from time immemorial in which all hardships are taken into consideration, and then somebody comes along and says, oh, no, Congress intended to dynamite every practice and every contract that existed in this country for fifty years and to say you have got to pay a man from the time he enters the portal until he comes out.

We will not have any trouble when this ruling is set aside, as I am firmly convinced it will be set aside. If, for some humanitarian reason, it becomes necessary, as in the past, to put in better skips, we can put them in, and at a much less cost, and for much less money than it would cost to the time and a half we would have to pay while the

men are riding down on what counsel apparently think are per se insecure skips.

That brings me to the last comparison between ore mines and coal mines, if it becomes necessary to go into it. I don't think the question of safety on this primary matter has anything to do with it, because things can be made safe. When you say travel time is work time, you can't correct your traveling time by making it safe. If we have got the right—if, under Section 7 ,we have got to pay time and a half for over time against custom, against contract, if we have got to pay that, why, we have got a right to work them from the time they hit the top until they get to the bottom; we can have them carrying what we please, from anvils on down, but we haven't been doing that. There are hundreds and hundreds of these people, as the proof now shows, that never did any work. If custom and contract is left where Congress intended it to be left, why, the changes of methods and transportation in the mines will evolve, as they have been evolving in these mines over the years, growing year by year better.

But Congress didn't intend under section 7—Congress didn't say in there we are going to annul and abrogate custom, and we are going to legislate against your contracts,—no matter how good your mines are; you may haul them down in air conditioned, leather cushioned skips, you may sprinkle talcum powder on the seats, but you have got to pay them for travel time just the same. Did Congress intend to say to 20,000 ore miners you shall be paid for traveling time and to 400,000 coal miners, you shall not be paid for traveling time? That is the question you have got here.

As we propose to show by Mr. Hassler,—we will show it witness by witness,—I see Ed Flynn sitting out there,—we expect to show it by him,—back begining in 1898, I expect to show that the conditions are the same in these coal mines right in our back yard as they are in the ore mines. I have already shown that they have been treated as the

same. We will show by witness after witness, if necessary, that a man who mines in a coal mine can go right into an ore mine and go to work, so far as knowledge of the work is concerned. There is one witness that has already been on the stand who will be recalled for that one question. That is Mr. Smith. Your Honor will recall he had a long experience in coal mines, and I expect to prove by him, if this evidence is admitted, after working in coal mines from youth up until middle age he was able to step into an ore mine as a foreman of their underground operations. We say that evidence is unquestionably admissible in this case.

I don't think safety has anything to do with it, but if it comes to that, we expect to offer the records as shown by the Bureau of Mines as to accidents in the ore mines and in the coal mines. We will show that the frequency in 1938 of accidents and the severity of accidents in our coal mines, and we try to make them as safe as we can,—we have got a more hazardous condition there than in the ore mines, as the evidence will show,—we have gas in the coal mines, we have thinner seams, longer reaches, longer extensions,—we expect to show that the actual records show in coal mines that the accident frequency in 1938 was one and one-half times larger right here in Alabama in the coal mines than in the ore mines, and then when you turn over to the United States as a whole you will find it is 239 percent larger.

So, we say, may it please the Court, for all these reasons, and there can be no reason to the contrary as I see it, the questions I am proposing to ask Mr. Hassler as to actual conditions prior to October 24, 1938, in these coal mines operated by the same companies under the same kind of wage contracts, in the same territory, with the same kind of cover above them, except not so secure, with the same, except longer distances to travel,—we say Congress had that information before it, had to have it under the authorities, and having it, that it never intended to say that in

coal mines traveling time per se was a part of work, and if they didn't say it in coal mines and didn't intend to say it, they didn't intend to say it and couldn't have said it in reference to ore mines.

The pleadings call for the—Yes, when they offer these depositions,—I suppose you are going to offer the government depositions you took in Minnesota?

Mr. Brodie:

That will become an issue when it becomes an issue.

Mr. Burr:

I want to know now. I am making an issue now. I am going to offer them if he doesn't, and they will show the facts I have stated here.

You have got to interpret Section 7 as applicable not to ore mines, not to ore and coal mines, not to an industry, but on the strict proposition does transportation per se in any plant where men work constitute a part of the day's work; that is the issue we have got here and the only issue we have to try here.

Mr. All, I think, has something to say.

Mr. All:

Judge, I want to speak very briefly with reference to the verbiage of the Act, and then I want to answer particularly one or two theories that Mr. Brodie advanced.

If the Court please, I want to ask two or three questions in connection with this thing,—of course, rhetorically, but I think the answers to those questions will determine the admissability of the evidence with respect to coal mines.

It is to be remembered this act was passed in October, 1938, and in this act the Congress defined a number of terms. For instance it defined the term "person" so that there would be no uncertainty about what was meant by the word "person"; it defined the word "commerce" so

that there couldn't be any mistake about what it meant when the word "commerce" was used; it defined the word "state", the word "employer", "employee", "agriculture", "employ", "industry", "goods", "produced", "sale", "sell", "oppressive child labor",—all at length. Why? Because it recognized that in most instances if they did not define what they meant, and there are a variety of meanings which, in various aspects, might be attached to the words used, and the Congress gave those definitions so that there could not be any mistake about what Congress meant whatever differences of opinion the people might have.

When the Congress came down to the words "work" and "workweek" used in Section 7 (a) this is all Congress said, —it did not define "work" and did not define "workweek":—

"No employer shall, except as otherwise provided in this section, employe any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than forty-four hours during the first year from the effective date of this section, for a workweek longer than forty-two hours during the second year from such date, or for a workweek longer than forty hours after the expiration of the second year from such date."

Workweek is not defined.

Now, the question I ask, if the Court please, is this: Why—How can workweek mean one thing in an ore mine and not mean the same thing in a coal mine,—a workweek as such? Why is it, as we say, and this is the issue we have,—it is not a question of whether an individual performs a chore going down in the mine, or does something which might be considered work, or isn't considered work because we are considering here whether traveling time as such is work within the meaning of the word workweek. That is important for two or three reasons. If the work

is considered to be work and done during work hours, the parties themselves can remedy that; if the employer is required to pay for it, not because it is travel time and hence work because it is travel time, but because the man actually works, that work can be increased by the agreement of the parties, or the necessity for that work may be dispensed with by the employer and the compensation obviated for it. For instance, if it be considered that carrying tools, for the sake of the argument, into the mines during travel time is work, then if that is work because of the carrying of the tools, the carrying of the tools can be discontinued, but the travel time is inevitable, so that the question here and the only important question is whether the travel time as such is work time.

Now, I think this, if the Court please,—I think Your Honor has proceeded thus far to the present time on the theory that the word "workweek" is an uncertain term, it is an ambiguous term, and we are trying to arrive at what Congress meant in the use of that word. I lay this down as a proposition that I do not think can be challenged, and that is this: That when a legislature or congress uses language or passes an act of this sort, it is presumed to have been passed in connection with and in consonance with the custom, practice and contracts in existence at the time unless Congress says to the contrary. In other words, if the Court please. I think this is the principle that has probably been laid down,—it is not exactly a maxim,—that a legislative act is not presumed to be in derogation of customs, practices and contracts unless so expressly declared; it is to be construed to be consistent with those customs, practices and contracts unless Congress indicates it intends to destroy or to change the customs, practices and contracts.

Now, Congress, in 1938, comes along and uses the word "workweek". Now, I ask this question: Congress doesn't in terms apply that to coal mines, ore mines, chalk mines, quarries, or any other mines; it doesn't even confine it to

mines. It simply says "workweek". What showing of fact is there in that act to say Congress intended,—I am speaking of the broad aspects now,—that Congress intended it to be different under the surface from on the ground? It didn't say so. It said "workweek".

Now, we will go further than that and confine it to underground. Why is it that should be applicable to an underground ore mine and not to an underground coal mine, or vice versa, or to a quarry or to a limestone mine? By the same token, if the Court pleases, if we were undertaking to arrive at what Congress meant by the term "workweek",—we don't know whether it is applicable to this case or not; we don't know what it means; we want to see what Congress meant,—would Your Honor say to me, "All, in order to see what Congress actually meant, I am going to see what the custom was in ore mines," and suppose I should reply, "Why is the custom in ore mines of any more value in arriving at what Congress meant in this act for universal, nationwide application than the custom in coal mines? Why would you take the ore mines as the criterion to determine whether or not Congress meant traveling time to be work time. Why aren't coal mines equally—why isn't that situation of equal value in determining what Congress meant? They didn't even confine it to coal or ore mines or mines. They said, "workweek".

What we want to find out, if the Court pleases, is what is the broad practice, what is the situation upon which this Act is to operate? What is the accepted conception of work time of the industries to which it will likely be sought to be applied? Workweek! Workweek! Why can we any more arrive at what Congress meant by the word "workweek" by canvassing the ore mine situation any more than we can by canvassing the coal mine situation? Why aren't they both applicable?

Now, something has been said about the coal mines being identical or practically identical with the ore mines. I

want to give my humble opinion on that. I think if you showed the coal mines were different from the ore mines, you would throw a lot more light on the problem than if they were the same, if you could show the ore mines were dominant the coal mines of comparatively little importance, I would say, therefore, some little minority here doesn't shed much light on the question. The big coal mine situation is the thing that Congress had in mind. I say—I repeat I say I don't think it is essential for the admissibility of the coal mines testimony for it to be like the ore mines. To help us it has got to be like the ore mines, but if it isn't like the ore mines, and they have got 75 percent of the country, it hurts us. It is competent either way, one against us and the other for us.

Now, I want to say this in reply to one or two—I may have misconstrued—as I understood Mr. Brodie, he said if you had an underground operation, and this act applies to one just as much as it does the other,—it doesn't make any difference what kind of work they are engaged in—and they paid the man for four hours and the man actually worked six hours, that the Administrator was not concerned with that so long as there was compliance with the maximum hours and the minimum wage.

Isn't that about what you said?

Mr. Brodie:

I assume you are addressing your remarks to the Court.

Mr. All:

I am, but I understood you to say that.

Mr. Harris:

I suggest we don't get into a debate.

The Court:

Yes; go ahead.

Mr. All:

I did that casually, Judge. I didn't mean to raise as much fuss over there as seems to have happened.

Here is what we mean: Suppose we have a coal mine. They say your coal mine is seven hours a day and 35 hours a week, and that makes a difference; you haven't worked your people overtime, and what we are interested in is overtime. Well, that isn't what they are interested in at all. I want to get this point clear. If a coal operator—a quarry is working a man seven hours a day and 35 hours a week, and it is held that the travel time is work time, regardless of overtime, the Administrator is interested in that man being paid for eight hours.

Now, mind you—mind that the facts on what happens to be the existing coal contracts,—7 hours a day and 35 days a week. Suppose, for the sake of the argument that the coal miner had one hour travel time,—one hour travel time, which would make 8 hours a day and 40 hours a week. There would be no overtime. But under this Act that company would owe him one hour straight time that they haven't been paying him. Do I make myself clear on that, if the Court please? Now, that is to say if travel is work, if travel as such is work, and the man has worked seven hours, he would be owed an additional hour.

The established custom in ore mines of face to face or working place to working place does not determine the meaning of work time. We contend that the established custom in coal mines of starting work at the face,—of starting at the face and ending at the face,—together with the ore mines,—is conclusive that work time commences at the face and ends at the face, but I say if it doesn't, and the individual shows he has, including his travel time as travel time and work time as work time, he has worked more than seven hours and hasn't gotten paid for more than seven hours work, he is entitled to pay for the excess over seven hours at straight time.

Mr. Burr:

Don't forget too, Ernest, in some of these coal mines, as I understand it, and I think the evidence will show it, it takes two hours travel.

Mr. All:

Yes, sir.

Now, if the Court please, we expect—Mr. Burr proposes to use Mr. Hassler. We have a few more witnesses. We propose to show the universal custom in Alabama and the universal custom over the country has been to follow the face to face policy in the coal mines, which Congress had to have in mind as much as the ore mines, and we think the evidence will show in the main the travel time in coal mines is greater than it is in ore mines and that the travel conditions are probably about the same,—may be no better or no worse,—there may be more danger in some aspects in coal mines, they may have gas in coal mines they do not have in ore mines, if danger has anything to do with work, which we don't think it has,—but if you have a situation in the coal mines which involves greater travel time than it does in the ore mines, and, if the Court please, this travel time is work time in ore mines it is work time in all mines, big, little and indifferent, and it is work time in coal mines whether big, little or indifferent, whether it will break them or whether it won't,—good or bad.

Now, we expect the evidence to show that in the main the coal mines are driven in the face of the coal, that the headings are turned off and they have rooms just like they have in the ore mines. There is a little variation in the coal mines as there is in the ore mines, depending on whether they use mechanical loaders or not, but the variations there are very much the same as the variations we find in ore mines, based on whether they use mechanical loading or hand loading.

Now, if the Court please, getting back to this particular Act, I say this: I don't think there is any answer to it,—that when Congress in this Act, comes along with an act that is labeled to relieve obstruction of interstate commerce,—Now, I don't know what they meant by that,—but they fixed a minimum wage and a maximum hour, and then provided you must pay time and a half for overtime, and then merely used the word "workweek",—that if that is in derogation of the long existing custom in the enormous coal mining industry in the country, and the ore mining industry, which is not nearly as great, but still great,—that if it meant to revolutionize the conception of those industries with respect to the conception that had always obtained between employer and employee as to what constituted work and what constituted work time, it was up to Congress to say so, else it was enacted for the purpose of operating upon and consistent with existing conceptions and not in derogation of them, and not intended to revolutionize them without saying so.

We respectfully submit, if the Court please, that especially in view of the fact of the number of ore mines, the industry, as great as it is, not being anything like as great as the coal industry, that you can't, if you are arriving at what Congress meant, that there is no logic in any position which would take into account the customs and usages of the ore mines and discard the customs and contracts and usages in the great bituminous coal industry, and this being a national act, you have got to take the national picture of the industries on which that act would operate and to which it would apply to determine what Congress meant and to say they did not mean to revolutionize industry in this particular, and they didn't say so, and it was up to Congress to say so if that is what it meant.

Mr. Quinn:

Your Honor,—

The Court:

I want to take a recess. We will recess until a quarter of two.

Court is adjourned until a quarter of two.

(Whereupon, at 12:25 P. M., July 21, 1941, a recess was had to 1:45 P. M. of the same day.)

After Recess, 1:45 P. M.

The Court:

Proceed, gentlemen.

Mr. Quinn:

With Your Honor's permission I would like to say a few words—

The Court:

Yes.

Mr. Quinn:

—with regard to the arguments of Mr. Burr and Mr. All.

The Court:

Yes.

Mr. Quinn:

Your Honor, it appears that it is more than obvious that the evidence relating to coal mine operations has no place in this case. The very fact, Your Honor, that the Administrator arrived at a different decision,—it depends entirely upon what elements entered into the decision,—that is diametrically opposed to the underground ore mines—

The Court:

That is what—exactly what I want to know—

Mr. Quinn:
Yes, sir.

The Court:
—what is behind the Administrator's decision about coal mines.

Mr. Quinn:
Then, if we admit Mr. Burr's evidence he has offered, it will necessitate, Your Honor—

The Court:
Why certainly.

Mr. Quinn:
—of going into every phase. So much for that.

As to the proposition Mr. Burr and Mr. All have repeated here several times before, why didn't Congress define the workweek in the Act, Your Honor, that is childish, it seems to me. With the thousands of different industries of the nation, Congress can't—

The Court:
I felt that way about it at first, but when you think about it, it is impossible.

Mr. Quinn:
It would have been impossible for Congress to define the different hours of the workers engaged in the interstate commerce industries of this country.

It is to be interpreted, and the only common sense way is to give it a common sense expression in the particular industry called in question. That is the only way it can be done.

Evidently Congress had that in mind when it enacted and set up machinery and had an Administrator to operate

and to carry into force and effect the operation of this Act with rules and regulations and constructive opinions of his own.

And that is what has been done here. He holds hearings and takes into consideration all the angles and sources of information and all the evidences that arises, the common sense, practical operation of an industry,—all that is necessary. For instance, in this case here that was done.

To go into an entirely different industry,—we are not afraid of the evidence, Your Honor, that might be brought in from the coal operations. Our objection is that it is irrelevant and illegal and has no materiality in this case. It is a different industry. They may be paid better in the coal industry. They certainly operate on a seven hour basis with $7.00 per day pay. Your Honor would have to take all that into consideration. They may be better paid from a half and a third than in the red ore industry in this district. Your Honor would have to take all that into consideration.

Congress sets the policy; Congress is the policy forming agency of this government. It sets up machinery and puts the operation of the Fair Labor Standards Act in the hands of a department with department machinery, and virtually says, "You are an intelligent administrator; use your common sense and interpret it in fitting each separate industry into the carrying out of the congressional policy."

That is all I want to say, Your Honor.

The Court:

Mr. Harris.

Mr. Harris:

If the Court please, I didn't take a correct and accurate measure of the time, but I think the gentlemen on the other side addressed the Court probably for an hour and forty minutes on this question this morning, and in their

argument was woven so much of questions of substance and questions of evidence that it becomes necessary for me to take up possibly more time of the Court than I otherwise would, because I don't want in any particular anything to be said on which I feel that I might perhaps be of some help to the Court in discussing what has been brought to the attention of the Court.

Now, it is a very elementary thing that here in America we live in a land that is ruled by law, a land where there has from time immemorial been a separation of power into the legislative, the executive, and the judicial departments.

We know that in those countries where law has disappeared the liberties of the people have disappeared, and we know that in our American system of government that the legislative branch of the government is the branch which outlines the broad, general policies, not a policy limited to a particular industry, not a policy limited to a particular group, but in the nation the Congress declares the public policy of the American people; in a State the State Legislature declares the public policy in that State, and we have in the Congress machinery set up and in use over a long period of years to investigate all of the economic conditions, the factual conditions, the social conditions, the method of living, the effect of this method of living, and method of payment upon the lives and health of the citizens. Congress has investigating committees to go out and accumulate a vast mass of facts, and then, under our system, those facts are considered by the members of the House and the members of the Senate, and they are translated into definite, precise, for the most part, rules of law, and when those rules of law have been promulgated, either the executive or the judicial departments begin to exercise their function.

Now, bearing in mind that in this case they have discussed with Your Honor time after time the existence of a custom, the existence of a usage, a practice, as if a cus-

tom or a practice or a usage would be of any avail where the supreme legislative authority of the land has spoken.

If their argument had any effect or any weight with a Court or with all the Courts occupying the same position that your Honor occupies from the Atlantic to the Pacific Seaboards, the Act of Congress would be absolutely vain and foolish because their argument comes to this, that the existence of things as they are is not to be disturbed by any legislative enactment. The very customs which they present to Your Honor are no doubt a part of the things which the Congress of the United States meant to do away with.

A system had grown up in America that was destroying America; and we crashed in 1933, and the operation of our three-fold system of government with a Congress passing laws to meet the shifting dangers that were confronting the American people,—the operation of that system has been the thing that has enabled the United States to keep going when countries all around her tottered and lost their liberty.

And what did the Congress of the United States say? In the very law that Your Honor has before you? "Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled:

"That this Act may be cited as the 'Fair Labor Standards Act of 1938'."

The very thing that Congress had in mind, the name with which it christened the law was a fair labor standards act,—not merely a labor standards act, but a fair labor standards act, and then in the very opening paragraph:

"Section 2: The Congress"—Now, here is where they find and declare the policy, the policy of the American people through their proper department of government. I

can't declare it and the gentlemen on the other side can't declare it. Congress can and has.

"The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary—" for what?—"for health, efficiency and general well-being of workers."

Congress, in passing the Fair Labor Standards Act of 1938 did not have as its goal and purpose the prepetuation of the existing order of things. Congress had in mind the crushing of existing evils. It was a remedial statute. It is to be liberally construed to accomplish this purpose.

Bear in mind that three-fold separation of power into legislative, executive and judicial. Let us see just for a moment how Courts operate. The gentlemen on the other side apparently want to transform this case from a judicial body—a branch of the judicial department, into the legislative body. They want this Court to embark upon an investigation, which, if we enter upon it, would extend from the Gulf of Mexico to Canada, and from the Atlantic to the Pacific. If this Court started upon the kind of evidence they want to introduce, and you are going to go into the coal mines in Alabama, could you stop there? Did the Congress of the United States legislate for the State of Alabama alone? They have set up in their bill the small proportion of the national production of iron and steel that is found in Alabama.

Then, if they start to investigate other industries, must not the Court, if it is going to change from a judicial into a legislative Court of inquiry,—must not this Court say I will do this: I will review every economic factor which any member of the Congress of the United States had before him when Congress promulgated the Fair Labor Standards Act of 1938, and the case which we entered

upon eight days ago, if that procedure is followed, would be in session, occupying the time of this Court, eight months from today if this Court considered every bit of evidence equally relevant and equally material.

They are asking this Court to announce a ruling, some abstract theory. They say if you don't do this it will cause such and such a result.

This Court—under our American system of jurisprudence, this Court passes upon specific questions between the litigants who are before the Court. The case system is the system that grew up in England and has been followed in America, and it has been a system that worked. The Court doesn't write text books and say I hereby announce and hand down that in all controversies that will ever come in this Court or any other District Court or any Court in any state of the land the rule to be followed will be so and so. Our system doesn't work that way. Our system is that the Tennessee Coal, Iron & Railroad Company comes in and says these men are about to sue them, and the men come in and say we have a claim against you. There is an actual controversy, and the declaratory judgments act passed by Congress is limited to an actual case of controversy between the parties, and the Court decides the issue between those litigants. It would be impossible—suppose that 500 suits were started in America and every United States District Judge in America said I will not longer be governed by the accepted order of things in America, but I will start, and I will conduct an investigation, which I haven't the facilities to conduct, I have no investigators that I am paying a maximum of $300 a month to send out all over the United States,—and every judge starts—he has a case before him, and every judge starts on an investigation of a legislative measure, and every judge in every Court arrives at a decision, and some of them say we will announce a general rule for all the world, and they announce rule A, and others say we will announce a general rule for all the world, and they announce

rule B,—where are we? We have substituted—one of the foundation principles of our government is one law governing one people, one nation,—for that we would have substituted an entirely different system, and that is what the effort to go into the coal mining industry would do in this particular case at this particular time.

I say that the gentlemen not only are asking the Court to do that, but I think they have shifted their position from time to time; they have shifted their position, bearing in mind, if the Court pleases, that this bill was not like when Your Honor went up to Court and a man handed you a plea you didn't expect or a replication you had never seen before, and you had to sit down and answer it right then and there,—when the plaintiffs filed the bill in this Court they had had plenty of time to prepare it. The bill was long, and it was carefully put together, and in that bill, subdivision Number 5 was devoted entirely to the opinion of the Administrator, and when I took—when an amendment was made and I took a red pencil and started through my copy of the original bill served upon me, I found page after page of references to the opinion of the Administrator had been stricken from the bill. Not only that, but they struck those exhibits which were attached to the bill, and by amendment which they had carefully studied, they came in and changed their plan and changed their original contention, and the Administrator is out of the case, and then they, in their argument to Your Honor this morning, time and time again, said Your Honor must do this to the opinion of the Administrator By what logical system can we work on that basis? They put it in. They took it out. Now, and they come in when they have solemnly removed it, and say on account of a question of evidence Your Honor must strike down the opinion of the Administrator?

We are not—We are not here—I personally am not here defending or challenging the opinion of the Wage and Hour Administrator. His opinion is not binding on this

Court. It is of persuasive authority, but that man in Washington, whatever his ability may be, can't substitute his opinion for Your Honor's opinion, and how do I know but what this Court or some other Court, in a proper case, if the Administrator has rendered a decision or opinion in the coal case, the Court might very well say you are entirely wrong in your ruling or in your opinion in the coal case, and right in your opinion on the ore mines case.

The thing this Court has to decide is this? This case deals with the employer-employee relationship. The law says no employer shall keep his employee engaged in work more than so many hours, and the Congress in its practical consideration of a business problem in the world stepped down the time. It was forty-four hours a week the first year, forty-two the next, and forty-two the next.

Now, why Congress adopted that particular hour limit I don't know. I do know this: That you can easily say, knowing that the coal miners in Alabama were already working and already had a seven-hour day and a five day week, that Congress, bearing that coal situation in mind, and with that well-established fact before it, gave a definite limit for American industry as a whole.

Section 7 of the Act begins,

"No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce,"—and so forth.

There isn't any shadow of doubt but that these men who come up there and report at the mouth of the mine, each one of them, is an employee. He is given a check which nobody else gets, so far as the Tennessee Company is concerned, except employees. He is required to turn that check in before he enters the mine, and the Supreme Court of the United States many years ago made a ruling that he also serves who only stands and waits, and one of the gentlemen argues that we are not giving, if we have

them carrying their lights or their tools,—we are not giving all the strength that the employee can give the way they give it when they are at the face. It isn't a question of the exhaustion of the physical body of the laborer. It is a question of whether or not the employer-employee relationship is existing from the moment that he starts down into the mine. I think personally that when he turns in that check at the tally house and becomes subject to their orders, that his time starts, but in this case it is of no great importance because it apparently only takes them a minute or half a minute or twenty seconds to go from the tally house to the mouth of the mine, therefore, the phrase portal to portal operates to reach the same practical results.

Now, I said the gentlemen had changed their opinion. In the Republic case, for instance, in the argument yesterday when they got into the Spaulding Mine, we objected to any testimony about Spaulding, and I made the statement to Your Honor that Spaulding wasn't in the case, and the gentlemen said it was. Well, naturally, I don't want to make any misstatement of fact to this Court, so we have checked, and I read from page 3, subdivision 2, "The plaintiff and its operations", and here is the language in the bill:

"Plaintiff owns and operates in Jefferson County, Alabama, two underground iron ore mines, one at Spaulding—parenthesis—this mine is not involved in this proceeding—parenthesis,—and the other at Raimund."

So, naturally, when they introduced evidence of Spaulding, they having led me and my associates, the gentlemen on my side of the table, all of us, to think Spaulding is out, we are taking them at their word, and in reading to Your Honor this morning the questions in the case,—I don't know whether Your Honor caught that,—Mr. Burr, as I saw it, was reading from questions in the case which

he had presented in his bill before we spent time and we spent labor and we took up the time of this Court and we sat—I think it took us a day or two days,—the lawyers in there agreeing on a pre-trial order that might be worked out and submitted to this Court, and there was one worked out, and there was one submitted, and there was one signed, and what does that pre-trial order say about the question in this case?

Here it is:

"2. It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

a. What constitutes the working time which makes up the workweek of"—Who? Of coal miners? Of railroad employees? Of men in rolling mills? No. Here is what we all agreed, and Your Honor signed an order after you drafted it out in Your Honor's library.

"What constitutes the working time which makes up the workweek of"—Who? "—the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938?"

That was the question we agreed upon and that was the question the order was made—

Mr. Burr:

Read 1, Crampton, which states the question, which is the way the bill states it, and your answer states it in the case.

Mr. Harris:

It states contentions. I am stating the issue in the case.

Mr. Burr:

You don't mind reading 1, do you?

Mr. Harris:
I want to conduct my argument in my own way.

Mr. Burr:
If you don't want to read it, it is all right with me.

The Court:
Go ahead.

Mr. Harris:
I want to make my own presentation.

The Court:
Go ahead.

Mr. Harris:
If the coal miners,—if a controversy arises with the coal miners, that is in the lap of the gods. We don't know whether they are ever going to have a disagreement or not. The United States Supreme Court does not pass on constitutional questions unless they are actually an issue in the case. Why should this Court travel afield in hypothetical theories and consideration of a possibly controversy between somebody who is not a party to this case?

Now, I don't know,—they say this is a case of considerable magnitude. It is a case of considerable magnitude. It involves right here in this district about 6000 men, but the magnitude of the case doesn't affect the legal principles involved, and I see no reason why a District Court of the United States should be threatened with the magnitude of some decision. This Court is here to decide all legal questions, great and small, and under our system of Courts, a District Court is a great Court; it is the one in closest contact with the American people. It is through its function that the decisions first touch the American citizen, and I don't care whether it involves ten million dollars or one hundred million dollars. It involves a question of law,

which this Court, under its power, is not only fully competent, but is under a solemn duty to decide, and no opinion of anybody else, whether it was actual or whether it was true,—actual and true or false and unsound, has nothing to do with this Court. We consider it, because the Administrator is supposed to have made some investigation, but this Court, if it had the case of a coal miner before it, could say, I don't care what your custom and habit has been, custom can't dictate to Congress, custom can't dictate to the Courts, laws are superior to customs, and your coal mine situation itself is wrong. But that case isn't here, and why drag it in as a sort of bugaboo as if to frighten a Court of having something to do with the actual decision of a controversy involving it.

Now, they wove here this morning their arguments of fact and of custom, and endeavored to show when these men asked for traveling time, as they call it, one way, they abandoned that request.

Well, the coal mining industry, Your Honor knows, has been highly organized for years and years. Is Your Honor to take a custom where the evidence is already in in this case and that evidence shows beyond the shadow of a doubt, first, that the Republic Company has never recognized these unions and entered into a contract with them, and there is no contract today between then and the Republic Company; it shows that the Tennessee Coal, Iron & Railroad Company from the time this union, the International Union of Mine, Mill & Smelter Workers was organized in 1933,—it shows for Your Honor to read, and we haven't put on any evidence whatsoever yet, but Your Honor can discern the true facts behind the situation; Your Honor can see that the Tennessee Company didn't even give them a document in 1934. They did write a letter to whom? Not to these men going underground, risking their lives and their health and expending their strength for the Tennessee Company,—they didn't write them a contract, but they said we will write a letter of understanding to a

government official in Washington, and then another year we will write them a letter of understanding, and another year that goes on, and we get a contract for the first time on October 6, 1938, and Congress was then, I imagine, considering the Fair Labor Standards Act, and they got a contract and increase of wages only eighteen days, as I recall, before the law whose benefits we are claiming in behalf of the people for whom it was passed,—we got that contract eighteen days before the law was passed, and to come into Court and say that a custom, a custom not from other places, a custom here, should operate to deprive these men of the benefits of a law when the whole law was to improve labor standards in America and industry, and there is case after case holding that they cannot waive the provisions of a law passed by the Congress of the United States or by State legislatures for their benefit. And surely, a private agreement is stronger than a custom which a man didn't create. His predecessors are the men who built up a custom, but any actual agreement is an act of his own, and the law is that an agreement of an individual cannot operate to destroy or nullify an act of Congress, and Judge Siddon, in a case before the Labor Relations Board, in the Fifth Circuit, held that to go around and get receipts or waivers or anything else wouldn't operate to destroy the force and effect of the ruling of the Labor Board. Then, if these receipts and waivers cannot operate to destroy a ruling of the Labor Board, can any receipt or custom operate to destroy the force and effect of an enactment of the Congress which created that Labor Board and all other Federal Boards except a few executive, departmental appointees?

So, we submit, if the Court pleases, to talk about going into custom,—to go into this industry,—if we go into it, where are we going to stop? There is a railroad case,—I imagine there are some two or three or four or five hundred thousand railroad employees in America. They had traveling time and a Federal Judge held they were en-

titled to be paid traveling time. If they go into the coal mining industry, shall I—shall the representative of the Administrator then go out and dig up all the evidence that was introduced in the railroad case and bring it here and say, Your Honor, we can't confine it to any one industry, you have to take the whole picture?

Mr. Burr:
The railroad case you are referring to, is that the Williams-Atlantic Coast Line Case you are talking about?

Mr. Harris:
That is right.

Mr. Burr:
I just wanted to know.

Mr. Harris:
I think it is the Williams case. I know it is the Atlantic Coast Line.

Mr. Burr:
You know what it holds, don't you?

The Court:
Go ahead, Mr. Harris.

Mr. Harris:
What is that, Your Honor?

The Court:
I say you go ahead.

Mr. Harris:
Yes, sir. I will be through, I think, in just a minute.
My position throughout this case, Your Honor, has been a very simple, a very direct position. I have endeavored

consistently from the beginning of the trial to the present moment to make clear to the Court, as the case proceeded, what I thought the issue was. That issue, as I see it, is as stated in the pre-trial order: What constitutes work time for the underground ore mining employees of these plaintiffs? That is a question of evidence, and the application to those facts of law, and the crucial and critical language of that law is that no employer shall keep an employee employed more than so many hours. We have that situation here with these men, and what difference does it make if any one of the ten million industries in America should present different problems and different consideration? What difference does it make whether, in some other industry, different questions should arise? This problem involves men whether they are in this department or that department. The problem under our system of government and of law is a problem and litigation between a plaintiff here and a defendant here, and this Court passes on the merits of that particular controversy between them, and this Court is neither interested, as I conceive the mind of the Court, nor intimidated by any threat of the magnitude of a decision off in some other industry or some other locality.

We have a clear-cut, simple problem. Ore miners have been working under certain conditions; they have been paid a certain amount; they have worked for a certain length of time. Has the law which was passed for their benefit conferred upon them a right? Are they entitled by virtue of that right to a judgment for pay which they have earned and which they have not received? It is the same immemorial system where A sues B for a horse, or he sues B for a breach of contract, and the Court, in deciding the horse case, wasn't interested in whether there were ten thousand horses roaming the Texas prairies or one hundred horses. It was interested in the question before it. The question here today is shall the entire picture of American industry be offered in this proceeding, or

shall be follow the time honored rule of trying specific issues between specific litigants, and I think with that ancient rule of law in mind and applied to this case that there is no question but what all the evidence of coal mines which Your Honor has kept out up until the present time should be continued to be kept out until this case is over?

The Court:

We will take about a five minute recess.

(Thereupon proceedings were in recess from 2:30 P. M. to 2:40 P. M., at which time proceedings were resumed as follows:)

Mr. Burr:

Judge, we didn't have the benefit of knowing what Mr. Harris was going to say about this matter. We don't request the privilege of replying to him at length—

The Court:

I can't give you but a few minutes,—a very few minutes.

Mr. Burr:

We only knew the matters brought out by the Administrator's attorney.

In the first place, the intimidation that was used for the purpose of threatening the Court or intimidating the Court by saying this was a case of great moment,—if we made such a statement, I do not recall it. Certainly we didn't think this Court could be intimidated by us or anyone else. The size of the case has nothing to do with it.

The Court:

The size of the case has nothing to do with it.

Mr. Burr:

The size of the case has nothing to do with it and the length of taking testimony has nothing to do with it.

He referred to the case of Williams against the Atlantic Coast Line. That case is as far removed from the proposition we have here as, I think, a case could possibly be. In that case the railroad had charged the men for carrying them to their places of work on some kind of railroad transportation. In charging them that brought the wage below the minimum of thirty cents an hour, and the District Judge held that was an improper charge, and it couldn't be deducted and thereby the railroad had not paid them the minimum amount.

Now, the Colonel read a paragraph in the finding of facts on the pretrial hearing or agreement. I want to read Your Honor the pertinent portion which shows again clearly what we have here for consideration. It starts with a.

"What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938?"

Of course, that is the primary question that is involved, but in determining that question, the Court is bound to find what the intent of the Congress was.

Here is the controversy which is what gives you jurisdiction, and it states it just as the bill does.

"(1) In reference to 'a' above, the plaintiff contends that such workweek does not include that portion of the time spent by the underground ore mining employees in being transported or walking to and from their usual working places.

"(2) In reference to 'a' above, the defendants contend that the workweek covers all time from portal to portal as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregate of the time

spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out."

Now, he says the evidence we offer of existing customs and practices and contracts in the coal mining industry is not admissible, because Congress had a right to change the customs and practices and contracts, and that was the purpose of the law. So, if Congress had intended to make a change, it would have said so. So, it is not a question of the hours used in testimony at all. It is a question of the rules of construction followed in construing an ambiguous statute, so, it is our contention if Congress acted as to ore mines it acted as to coal mines. The only thing that bears on the question of the underground coal miners is is there a substantial amount of traveling time? There is a proposition that seems to be so clear that I don't see how it could be questioned, and I have heard nothing Colonel Harris said in his argument that militates against it. I am just concerned—I don't think there is any man more concerned in the United States than I am in keeping the separation intact of our three divisions of government, but I want to say this, and as we see this and as the evidence supports our view, if the Courts should hold, particularly in the absence of this evidence, that Congress, when it used the word "workweek" included travel time in ore mines and didn't include it in coal mines, then surely the Court, as we construe it, would be usurping the functions of Congress.

Mr. All:

If the Court please, for about an equally short time.

I wouldn't want to say anything here except I have some very deep convictions about this partcular proposition, not that it means anything much to anybody but me and my client, but I submit that the argument which has been made hasn't touched this point at all. It just hasn't touched this point at all. It just hasn't touched it.

We have got here a suit, it is true, which involves the ore mines, but the very first thing that the Court has got to do in deciding the rights of these parties is to construe the statute to determine what the statute means. A great many times people will sue and say I am entitled to this under the statute, and you have got to decide very often how broad that statute is in order to determine whether it covers this man, that man and the other man. So, we are dealing here with the primary, essential, basic question as to what the proper interpretation, the basic interpretation of the statute is before we can apply it to the particular plaintiff in the case. The statute has got to be construed.

Colonel Harris made this statement, and I want to say this.—I can't—whether I have the right or not, I want to say this with all the earnestness and conviction I have got: That this Court, in view of what he read in the prelude to the act may say what Congress intended to do was to do away with existing custom. That is just about what he says. Now that, if the Court please—I say this with all frankness,—that is not a legal argument. That is not a legal argument. I agree with him Congress may have wanted to disturb and set aside those customs, but at the same time it may not have and Congress doesn't—this is a cardinal rule of construction,—no Congress can pass revolutionary legislation without labeling it.

The Court:

Without what?

Mr. All:

Without saying so. It is to be taken as consistent with the practice unless Congress indicates to the contrary.

The Court:

That is what you said before lunch.

Mr. All:

That is what I said, but I call attention to the fact he hasn't answered it.

Now, he called attention to the Fair Labor Standards Act. It is a sentimental appeal, but the Fair Labor Stanuards Act is a means, by abbreviation, for making reference to the Act, and doesn't carry any other signification whatever.

I believe Mr. Burr made this proposition that if it had been the intent of Congress that traveling time should be work time it would have said so in enacting the legislation.

Now, the other point is this, if the Court please: If Congress passes an Act that is ambiguous or uncertain as to what is meant by its terms, and there is a prevailing, established custom that will shed light on the construction of the legislation, however that might be, and aid the Court in determining whether that legislation is intended to disturb the custom or follow the custom, and if that is the point in the case, the length of time and scope of evidence that is necessary to go into that to determine that issue in the case is not an argument in the case; it may take thirty minutes, five days, or it may take ten days, but if it is necessary to exhaust the custom in determining what the legislative intent was, the time element and the ramifications are no answer to the proposition.

Mr. Harris:

I understood the order of the procedure was to give us the close?

The Court:

Yes, sir.

Mr. Harris:

On account of the fact we were the objectors.

The Court:

Yes, sir.

Mr. Harris:
I think those gentlemen used five or six minutes apiece.

The Court:
I am going to sustain the objection.

Mr. Harris:
Then we don't care to be heard.

Mr. Burr:
Come around, Mr. Hassler.

2021 J. M. HASSLER thereupon resumed the stand, and having been previously sworn, testified further as follows:

Direct Examination—Resumed.

Mr. Burr:
I suppose Your Honor will give us the permission to make our offer, and I will do that with Mr. Hassler on the stand.

Mr. Harris:
In order that we don't have to take up the time of the Court, it is our understanding each of our objections are in and we will not have to repeat them, and as we understand, the objections are sustained?

The Court:
Yes, sir.

Mr. Burr:
And we have an exception, separately and severally for each offer of proof for each plaintiff.

Mr. All:
For each plaintiff.

Mr. Burr:
For each plaintiff as against each set of defendants. I will eliminate what he has already testified—

Mr. Harris:
Of course, what he has already testified to about coal mines, I move it be excluded.

The Court:
It will be excluded.

Mr. Burr:
We except to that.

Mr. Burr:
I will read the offer to prove.
I entered the employment of the Republic Iron & Steel Company, now the Republic Steel Corporation, in February, 1929, and since 1930—

The Court:
Ask him the question. If you are going to read—

Mr. Smith:
I understand he has testified about his experience.

Mr. Burr:
I don't understand what you have excluded.

The Court:
The preliminaries about who he is with and what he does is not excluded.

Mr. Smith:
There was no objection to that.

The Court:
I don't know there is any testimony in—

Mr. Harris:
There is some testimony—

Mr. Burr:
About the location of the coal mines and distances.

The Court:
Well, that is all stricken, all about the coal mines.

Mr. Burr:
We offer to show he worked, as he said this morning—

Mr. Harris:
The judge said that was in.

The Court:
I just stated that was not excluded, Mr. Burr. All I said was excluded was the last part of his testimony, you might say.

Mr. Burr:
I say I am fixing the time.

Since 1930 I have been chief engineer for the company, having engineering charge of both its ore and coal mines, and during this period, both prior to October 24, 1938, and since, I have been thoroughly familiar with the conditions of work in the ore mines at Raimund, Spaulding and Shannon, and also with the coal mines of the company, which, during this time, have been located at Sayreton Mines Number 1 and 2 and Virginia Mines.

I understood Your Honor to state here you were allowing me to prove that about the coal mines?

The Court:
I have allowed that in.

Mr. Burr:
About him being familiar with the coal mines?

The Court:
Yes, sir.

Mr. Burr:
All these coal mines are located in Jefferson County, Alabama.

I offer to prove the Sayreton mines are about 14 miles from the Spaulding mine and Virginia mine is about 8 miles from the Raimund mine.

I offer to prove that.

Mr. Harirs:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
The coal operations are underground mines.

Mr. Harris:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
The entrance to all these mines is by slopes with varying degrees of pitch.

Mr. Harris:
We object to that.

The Court:
That is sustained.

Mr. Burr:
The coal mine Number 1 at Sayreton has a pitch of approximately 15 degrees, and Number 2 about 16 degrees, and the slope of Virginia mines is on a pitch of 22 degrees 18 minutes.

Mr. Harris:
We object to each one of those.

The Court:
Sustained.

Mr. Burr:
All right, sir.

(By Mr. Burr):
Q. I would like for you to tell me what the slope at Raimund is, the ore mine.

Mr. Harris:
We object,—Oh, the ore mine?

Mr. Burr:
Yes, sir. I want to get the record complete.

A. It varies from about 26 degrees up to 51 degrees.
Q. What is the pitch of the slope of the ore mine at Spaulding?
A. 18 degrees.

Mr. Burr:
We offer to prove that there is no difference in the principle of mining iron ore than from the principle of mining coal.

Mr. Harris:
We object.

The Court:
I sustain it.

Mr. Burr:
We offer to prove that in the coal mines the headings turn off the main haulage way, that is, the slope; in the same way they turn off in the ore mines.

Mr. Harris:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
It is not necessary for me to repeat my exception each time?

The Court:
You have them anyhow.

Mr. Burr:
That is what I understand. He was objecting each time.

The Court:
I said it was necessary.

Mr. Burr:
In the ore mines the headings turn off at approximately right angles from the slope.

Mr. Harris:
That is in the ore mines?

Mr. Burr:
That is in the ore mines. Do you object to that?

Mr. Harris:
No, I don't object.

Q. Is that a fact, Mr. Hassler?
A. Yes, sir.
Q. I will ask you if they turn off in the coal mines in the same way, the only difference being that in the ore mines the working places turned off from the headings are called stopes, and in the coal mines they are called rooms?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Then I offer to show that the transportation has been the same in the coal mines as in the ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove in the coal mines the underground employees are either carried a part of the way from the entrance of the mine by mechanical means and walk the remaining portion of the way to their working places, or the walk all the way to and from their working places from and to the entrance or mouth of the mines.

Mr. Harris:
We object to that as to the coal mines.

The Court:
Sustained.

Mr. Burr:
We offer to prove by him that in the coal mines he is testifying about or we offer to have him to testify about, the men have always walked from the entrance of the mine to the bottom of the slope where man trip trains pick them up and carry them to the various sections of the mines in which their working places are located, and at the end of the shift the man trip trains return the men to the bottom of the slope where they catch a specially built man car train—

Mr. Harris:
We object to that.

Mr. Burr:
—and return to the surface.

Mr. Harris:
As to coal mines, we object.

Mr. Burr:
All right, sir. We offer this as to ventilation: Where mechanical ventilation is used, it is substantially the same in the ore mines and the coal mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Ventilation in the ore mines is cooler than in the coal mines because,—

Mr. Harris:
We object to that.

Mr. Burr:
I haven't finished the sentence.

Mr. Harris:
I beg your pardon.

Mr. Burr:
—on account of the gas which is found in the coal mines, and not in as hazardous quantities in the ore mines, the ventilation has to be forced in the coal mines, and for this reason the air is hotter in the coal mines than in the ore mines.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
The roofs of the slopes are handled in substantially the same way in both the ore and coal mines,—

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:

With the exception that the roofs in the slopes in the ore mines are higher from the bottom than in the coal mines,—

Mr. Harris:

We object to that comparison.

Mr. Burr:

—while the width—I don't offer it as a comparison. I am offering it as a fact. I want to change it. I want to get a fair ruling.

The Court:

State the question.

Q. State what has been the average height of the slopes in the ore mines.

A. It will vary from a minimum of around seven feet up to as high as twenty or maybe twenty-five feet.

Q. Now, state what the heights are in the coal mines with reference to the same—

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove—How much is it, for the—

The Witness:

At Sayreton it would be about 72 inches.

The Court:

That is not in the record.

Mr. Burr:
I am just getting the information.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
He objected to it as a comparison.

Q. Is that same thing true with reference to the headings leading to the respective working places?

Mr. Harris:
We object to that.

The Court:
Is that with reference to coal mines?

Mr. Burr:
Coal mines, yes, sir.

Mr. Harris:
We object.

The Court:
Sustained:

Mr. Burr:
We except.

Q. In the coal mines, I will ask you to state whether or not the roofs are so low in a large portion of the working places, or most of the working places, that the miners have to work in a stooped or sitting position?

Mr. Harris:
We object to that.

The Court:
Sustained.

Q. In the ore mines, do they have to work in a stooped or sitting position,—in the ore mines?

A. No, sir. They can stand up at practically any place in them.

Q. Now, you are familiar, are you, as chief engineer with the grades in the ore mines we have been asking you about?

A. Yes, sir.

Q. Are they on a level or do they undulate up and down?

A. The grades?

Q. Yes.

A. Oh, they vary up and down.

Q. I will ask you to state whether or not in the coal mines the grades undulate and vary up and down?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, I offer to prove they do not vary as much in the coal mines as they do in the ore mines he is talking about.

The Court:
Just a minute. What is the new ruling under the rules of procedure as to an offer?

Mr. Burr:
I think you have a right to make your offer of proof.

The Court:
I think not.

Mr. Burr:
Certainly the Court would give me that right. This is a matter about what we are sincere.

The Court:
I know you are.

Mr. Burr:
We think this matter ought to be presented. We have this proof here. There is no question about that. We have it here to be presented.

Mr. Harris:
Judge, I don't think there is any question but what he has a right to make his offer.

The Court:
I think he has a right, according to the rules.

Mr. Harris:
I haven't objected to him making his offer.

The Court:
I know. I just wanted to see. All right, Mr. Burr.

Q. Mr. Hassler, are you familiar with the question of transportation and handling of supplies and tools in the ore mines?

Mr. Harris:
We object to that.

Mr. Quinn:
That is in the ore mines.

The Court:
You are asking about ore mines?

Mr. Burr:
First about ore.

Q. I am asking if you are acquainted with the hauling of ore and the handling of supplies and distribution of crews in the ore mines?

A. I am familiar with the handling of ore and supplies.

Q. I will ask you if you are familiar with the same thing in the coal mines?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove he is familiar with that, and offer to have him testify as to the method in both mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
As showing that it is substantially the same. We state the proof will show it is substantially the same.

Mr. Harris:
Object.

The Court:
Sustained.

Mr. Burr:

I offer to prove by him the following facts in reference to the equipment and tools:

There are differences in the equipment and tools used in the coal mines as contrasted with the ore mines. Coal is a little more flexible than ore, and the blanket or seam of coal is a little more uniform, and for this reason somewhat different tools, and generally speaking lighter tools are required at the face in the coal mines than in the ore mines.

Mr. Harris:

We object to that.

The Court:

You are offering to prove that?

Mr. Burr:

Yes, sir.

The Court:

I sustain the objection.

Mr. Burr:

Your Honor, the objection is not made because I am drawing the comparison, because, if you do—

Mr. Harris:

I object to any testimony whatsoever about—

Mr. Burr:

I know, but you don't put it on that ground, because it will take so much longer to ask him the questions. I can ask him—

Mr. All:

The point is you are asking questions which would tend to prove the conclusions.

Mr. Burr:
I am offering to prove facts. It is not the conclusion.

The Court:
All right.

Mr. Burr:
I offer to prove in coal mines a machine is used at the face to undercut the coal after which it is shot down by explosives.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove where mechanical loaders are use,—Sayreton Mine Number 2 is fully equipped with mechanical loaders, while Sayreton Mine Number 1 is a hand loading operation—

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
That the mechanical loaders in the coal mines are substantially lighter than the mechanical loaders in ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Q. Do you know substantially the weight of the mechanical loaders in the coal mines and ore mines?
A. Yes, sir.

Mr. Harris:
We object as to the coal mines.

The Court:
Sustained.

Mr. Burr:
Judge, off the record, I didn't have this rule in mind, but I think under the rule the way I prepared this is the proper way to do this.
The rule says you have a right to reduce it to writing and offer it. I believe I will go ahead and read it.

The Court:
How long will it take?

Mr. Burr:
Not long,—quicker than this way.

The Court:
All right.

Mr. Burr:
Your Honor, it will be understood where I use a conclusion or comparison, I am offering the two sets of facts that make up that comparison.

The Court:
He can object to one without the other. In other words, if you mention coal and ore, for instance, like the mechanical—

Mr. Burr:

Can't we have an understanding when I mention iron ore there is no objection? Won't that cover that?

Mr. Harris:

Well, we will get into a very difficult problem there.

The Court:

I think so.

Mr. Harris:

I can't let that—

The Court:

We will just follow it, Mr. Burr.

Mr. Burr:

All right, sir.

The Court:

Go ahead.

Mr. Burr:

The drills used in coal mines are practically motor driven augurs.

Mr. Harris.

We object to that.

The Court:

Sustained.

Q. The drills used in the ore mines are the tripod—what kind of drill do you call that?

A. The drills used in the ore mines are the tripod or column drills.

Q. Tripod or column drills?

A. Yes, sir.

Mr. Burr:
We offer to show how much explosives are used in the coal mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And how much explosives are used in the ore mines and then to prove that the explosives used in the coal mines are loaded lighter than those used in the ore mines.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove now the distribution and handling of tools in the coal mines during this period of time.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove that tools are supplies to the miners in the coal mines at their working places—

Mr. Harris:
We object to that.

Mr. Burr:

—except that in the coal mines the custom has arisen over a great many years of the miners picking up, both on the outside and on the inside, the picks and shovels and other tools and supplies and carrying them to their working places.

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove that picks and shovels have always been carried by the miners in the coal mines to and from their working places—

Mr. Harris:

We object to that.

Mr. Burr:

—whenever it is necessary to take them out to be sharpened and repaired.

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove in the coal mines during this period of time, and all my questions relate to the period of time—

The Court:

Yes.

Mr. Burr:
The coal miners have always obtained their supplies of explosives at the surface and carried them to their working places.

Mr. Harris:
We object.

The Court:
That is coal miners?

Mr. Burr:
Coal miners, yes.

The Court:
Sustained.

Mr. Burr:
That this is not true of the caps used to detonate the explosives, these caps being supplied to the miners at their working places by a service man.

Mr. Harris:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
We offer to prove that the coal miners use electric lamps; that they obtain these lamps at the tally house just before they descend into the mines, and return them to the tally house at the end of the shift, being charged a rental by the company for their use.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And we offer to prove this is the exact practice in the ore mines.

Mr. Harris:
They have already proven the practice in the ore mines by independent witnesses.

Mr. Burr:
I think it has been proven.

The Court:
Yes.

Mr. Burr:
I think so.

We offer to prove each employee in the coal mines is furnished by the employer with a brass check carrying a number on it, and each employee deposits this check as he enters the mine with the mine foreman, and it is placed on the board where his working place is, and that on coming out of the mine he takes up the check he has deposited as he entered the mine at the beginning of the shift.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove that the purpose of that in the coal mines is to enable the mine foreman to know who has gone

in the mine and whether all the miners have come out of the mine at the end of the shift, and also for the purpose of noting and filling vacancies when vacancies occur in the crews.

Mr. Harris
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove that the foreman of the coal mine, when a miner—when a miner hasn't deposited his check; and his place is vacant on the board, that the foreman fills that vacancy—

Mr. Harris:
We object to that.

Mr. Burr:
—by ether phoning down and having the vacancy supplied from the service crews, or by putting a man from another crew in his place?

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove that is the same exactly as it is handled in the ore mines.

Mr. Harris:
And we object to that.

The Court:
Sustained.

Mr. Burr:
All right, sir. We offer to prove—I wouldn't admit this evidence is admissible, because we have been objecting to it all along,—we offer to prove that the records of the company, which are kept by Mr. Hassler, show that since his connection with the company there has been a better record for frequency and severity of accidents in the ore mines than in the coal mines.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
And we offer the records themselves for the purpose of showing that.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove by Mr. Hassler that the normal employment in the coal mines during this time has been 1100 men.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:

And that the normal employment in the ore mines during this period has been approximately 600 men.

Q. Is that for all your mines, Raimund and Spaulding?

A. The two mines.

Mr. Burr:

Now, we first offer to prove he is familiar with the extent, depth, distance and cover of the coal mines of the company.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

We offer to prove that the coal mines both in reference to the slopes and the headings are longer and more extensive than the ore mines.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

We offer in proof—in evidence the map which has been identified as Republic—

The Court:

Exhibit 17.

Mr. Burr:

Exhibit 17, yes, sir.

Mr. Harris:
We object to that map, which, as I understand is a map of a coal mine.

The Court:
Sustained.

(Thereupon a map of Sayretons Mines of Republic Steel Corporation was marked for identification Republic Exhibit No. 17.)

Mr. Burr:
We offer to prove that is a correct map by Mr. Hassler who knows, of the coal mines it purports to show.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove a similar map of the Virginia mines of the Republic Company, which is now being prepared for operations.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Will you please get that out and let it be marked?

The Clerk:
It will be Republic Exhibit 18 for identification.

Mr. Harris:
We object to that map too, if Your Honor please.

Mr. Burr:
We offer to prove that is a correct map.

Mr. Harris:
We object to it.

The Court:
What number?

The Clerk:
Number 18.

The Court:
Republic?

The Clerk:
Yes, sir.

The Court:
The objection is sustained.

(Thereupon a map of Virginia Mines of Republic Steel Corporation was marked for identification Republic Exhibit No. 18.)

Mr. Burr:
Now, we offer to prove by Mr. Hassler that the distance from the entrance of Mine Number 2 of Sayreton to the ~~fur~~therest working place on and shortly prior to October 24, 1936, was approximately 1-3/4 miles.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
And that the shortest distance from the entrance to the nearest working place at that time was three-quarters of a mile.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And that in Mine Number 1 at Sayreton, the furtherest distance at that time was approximately 3-1/2 miles, and the shortest distance 2 miles.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove that the Virginia mines of the company have not been in operation since the year 1932, but are now being prepared for reopening.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
That the length of the main slope at Virginia mines on and shortly prior to October 24, 1938, was approximately 3200 feet,—

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
—and the shortest distance from the bottom of the slope to the furtherest place that is now being prepared for work was approximately one and a quarter miles, and the shortest distance a quarter of a mile.

Mr. Harris:
We object.

The Court:
Sustained. That is what mine? A coal mine?

Mr. Burr:
Virginia coal mine, yes.

The Court:
Yes.

Mr. Burr:
In other words, the offer is to show that the distance is further than in the ore mines.

The Court:
Yes.

Mr. Burr:
That is the purpose of it.

The Court:
Yes.

Mr. Burr:
Now, we offer to prove by Mr. Hassler he was not only acquainted with the coal mines of the Republic Company, but is acquainted in a general way with the coal mining operations in the Alabama District—

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And was so acquainted during the period of time on and shortly prior to October 24, 1938.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Then we offer to show that during that period of time he was an engineer at Littleton Coal Mine located in Jefferson County, Alabama, and operated by the Semet-Solvay Company, and was located within about how many miles, Mr. Hassler, so I can make my offer from your nearest ore mine?

The Witness:
I would say a distance of about 25 miles.

Mr. Harris:
I thought that went in earlier in the testimony in giving his personal experience.

Mr. Burr:
He excluded everything. I am getting the distance.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, we offer to show he worked in Number 4 mine of the Tennessee Company—

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
—and I offer to prove that Number 4 mine of the Tennessee Company is about four miles from the ore mine operations.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
All right, sir. We offer to prove the depth of the slope in the Number 4 mine and the distances of the headings leading off from that slope, the actual distances.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And we offer to prove by him that they are further in both respects than in the ore mines that he is familiar with.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Oh, yes. I offer the actual distances, and Your Honor sustains that?

The Court:
Yes, sir.

Mr. Burr:
Now, we offer to prove by him that in addition to the mines we offer to prove he has actually worked in, he is familiar with the other coal mines in the district in a general way, has been in them, and that the same general conditions we offer to prove exist in the Republic Company's mines and in the Littleton mine and in Number 4 of the Tennessee Company exist in these other mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And we offer to prove each one of those conditions separately.

Mr. Harris:
And we object separately.

The Court:
Sustained.

Mr. Burr:
We offer to prove by him it has been the custom in the coal mines during the period of time inquired about, that is, from the time he first came to Alabama and was connected with the coal mines until the present time, to compute the men's wages and pay their wages on the working place to working place basis.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And that custom has been universal and without exception.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And we offer to prove by the witness that the Republic Company and no other company in Alabama during that

period of time has ever paid the men—the underground employees, I mean, by the men, and that the underground men have not received any payment for the time spent in going to and from their working places.

Mr. Harris:
That is coal mines?

Mr. Burr:
Yes, sir; I am talking about in every coal mine in Alabama.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Then we offer to prove the computation and payment of wages to all underground service employees in the mines I mentioned above has always been on an hourly or day basis,—

We object.

Mr. Burr:
—there being an occupational rate set up for each job.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove the same system has existed in the ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove the rate per crew for the number of hours at the face which constituted at the time the basis of the mines' operations.

Mr. Harris:
We object.

The Court:
That is the coal mines?

Mr. Burr:
Yes, sir; that is the tonnage.

The Court:
Sustained.

Mr. Burr:
Now, we offer to prove by Mr. Hassler that it has been his business, and that he has represented the Republic Company to conduct the employee relationships and bargaining relationships with the employees and with the union members and employees.

Mr. Harris:
As to coal mines?

Mr. Burr:
As to coal mines, yes, sir.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, we ask that this be identified as Republic Exhibit—

The Clerk:
19.

Mr. Burr:
And I would like permission to withdraw it and substitute copies later on.

Mr. Harris:
That is to coal mines?

Mr. Burr:
Yes, sir.

The Court:
That is as to coal mines?

Mr. Burr:
Each one that has been made.

Mr. Harris:
We object separately and severally.

Mr. Burr:
We offer them separately and severally.

The Court:
I sustain the objection, separately and severally, and you are given the right to substitute—

Mr. Burr:
Copies of the originals?

The Court:

Yes, sir.

(Thereupon a booklet containing original agreements between Republic Steel Corporation and United Mine Workers of America as follows:

Agreement effective April 1, 1934, and expiring April 1, 1935;

Agreement effective January 11, 1935, and expiring September 22, 1935;

Agreement effective September 2, 1935, and expiring April 1, 1937;

Agreement effective May 14, 1937, concerning washer loss;

Agreement effective April 1, 1937, and expiring April 1, 1939;

Agreement effective April 1, 1941, concerning retroactive rate;

Agreement effective May 10, 1941, being a temporary agreement, and expiring March 31, 1943; was thereupon marked for identification Republic Exhibit No. 19.)

Mr. Burr:

Your Honor wouldn't be interested, I don't suppose—I might state for the record, so you will know what you are passing on, that each and every one of those contains the definition of hours of work as being at the face.

The Court:

That is for the coal mines?

Mr. Burr:
Yes, sir, that is for the coal mines.

Th Court:
I don't think that is necessary. I am not going into it.

Mr. Burr:
They speak for themselves.

Now, the contracts that I have offered cover the years from 1934 down to the present contract, which expires on March 31, 1943. That is the one just recently made. That is under the cover that I just gave him just now.

Now, in addition to those contracts I offer to prove in 1933, that is, the year previous to the contracts, that John L. Lewis and the United Mine Workers of America signed —I am offering to prove in 1933 he had a signed contract with the local committee of the miners union.

Mr. Harris:
We object.

The Court:
I sustain the objection.

Mr. Burr:
And that that contract contained a similar agreement that the day's work was at the working place, just as described in these contracts, the definition in that contract being:

"Eight hours of labor shall constitute a day's work, and this means eight hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piece work basis."

Mr. Harris:
We object.

Mr. Burr:
Then I offer separately, so there can't be any argument,—I don't think it makes any difference,—that the seven hour day took place—the eight hours, back when we had eight hours,—it appeared first in that contract back in 1933.

We offer to prove that.

Mr. Harris:
We object.

The Court:
I sustain the objection.

Mr. Burr:
All right, sir.
I offer to prove the reason we haven't got the copy of the contract that was made in 1933, he has made a search of his files, and that contract has been lost, but the facts in connection with it are as I have offered to prove.

Mr. Harris:
We object, because it is immaterial.

The Court:
Sustained.

Mr. Burr:
Now, we offer to prove, separately and severally, that each one of the facts I have offered to prove has existed at these various times:—First, shortly prior to March 24, 1938—October 24, 1938; Second, for a substantial time prior to that time;—

Mr. Harris:
As to each we object.

Mr. Burr:
And third—

The Court:
Sustained.

Mr. Burr:
—at a period time as far back as his knowledge of the conditions goes.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And, fourth, as to the time since that time, down to the present moment, with the present existing contract by its terms expiring in 1943.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, we want to offer this—Well, I think I will take that up letter. Yes.

We want to offer this testimony, in each separate part of the offer, separately as to each separate defendant without—I mean in the two classes. I don't want to divide

them by separately as to—Well, I will divide them in three classes.

First, with reference to the defendants associated with the C. I. O. organization.

Mr. Harris:

And we object for the C. I. O. as to all of them.

The Court:

Sustained.

Mr. Burr:

And, second, as to the defendants affiliated with the American Federation of Labor.

Mr. Quinn:

The same objection as to those.

The Court:

Sustained.

Mr. Burr:

And, third, and very separately as to him, as to the Intervener, General—Colonel or General Fleming.

Mr. Brodie:

And we object as to him.

The Court:

Sustained.

Mr. Burr:

And we separately and severally offer it on behalf of each plaintiff as to each class of defendant.

Mr. Harris:

And separately and severally all of us on this side of the table object.

The Court:
Sustained.

Mr. Burr:
I want to offer next—I want the record to show that this evidence I am now offering, separately and severally, is being offered, first, before Mr. Hassler testifies, so that his testimony follows it, and then, after Your Honor sustains objection, I want to offer it as following his testimony, so there can't be any question about it being premature.

I offer first—

The Court:
I—

Mr. Harris:
I don't follow you on that.

Mr. Quinn:
I don't follow it either.

The Court:
I don't follow your point.

Mr. Burr:
Well, I will offer it now.

The Court:
That is something else.

Mr. Burr:
I am offering this documentary evidence. I judge, under Your Honor's ruling, you will rule it out.

The Court:
Yes, sir.

Mr. Burr:

We will see what it is when we get to it.

I offer now the publication which is identified in the order of proof in paragraph d-2.

I offer the publication of the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayres, Director, entitled "Iron Ore, Pig Iron, Ferro-Alloys, and Steel, By Robert H. Ridgway and H. W. Davis. Chapter from Minerals Yearbook, 1940, United States Government Printing Office, Washington, 1941."

Now, I particularly offer these portions from it, but separately offer the entire book, so it can't be said we are not putting it all in the record, but the part I am calling attention to, though, appears on page—

Mr. Harris:

I want to see it.

The Court:

I think counsel will want to see it.

Mr. Burr:

Judge, I am glad for them to see it, but this is the document presented in the pre-trial agreement, and they have had a chance to see it.

The Court:

If you will state what it is—

Mr. Burr:

That is what I was trying to do.

If they want to stop and look them over now, I will be glad to do it.

Mr. Harris:

Judge, I have been as busy as a switch engine since the case started.

Mr. Burr:
If you see anything you want to see, let me know.

The Court:
Let him glance over it.

Mr. Burr (handing document to Mr. Harris):
Don't lose my markers, Crampton. Hold them where they are.

Mr. Harris:
If the Court please, these documents have a great mass of figures in them, and I would like the opportunity of looking them over tonight so we would have a chance to see whether we wanted to object.

The Court:
I think it will be all right—

Mr. Burr:
I will offer them and you can have them tonight.

The Court:
I can rule on them tomorrow.

Mr. Burr:
Let me identify them.

Mr. Harris:
Identify them merely, and don't offer them now, and we can put in our objection in the morning.

Mr. Burr:
I am going to offer them now, and you can hold your objection until tomorrow morning.

The Court:
You can hold your objection until tomorrow morning. You will not waive your right to object.

Mr. Harris:
And our objections, when offered tomorrow, will be as though they were offered now?

The Court:
Yes, sir.

Mr. Burr:
That will be all right. We offer this exhibit—

The Clerk:
It will be T. C. I. Number 28.

The Court:
What number?

Mr. Burr:
T. C. I. Number 28, and that is the publication referred to under d-2 of the pre-trial agreement, which is a publication of the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayers, Director, entitled "Iron Ore, Pig Iron, Ferro-Alloys, and Steel" by Robert H. Ridgway and H. W. Davis,—Chapter from Minerals Yearbook, 1940, Review of 1939, United States Government Printing Office, Washington, 1941.

The Court:
Will you make a note—

Mr. Burr:
He can have the exhibits after we turn them over to the clerk.

If Your Honor don't mind, I am going to ask that the exhibits be numbered as they are numbered in the pre-trial order so I will not get them mixed up. I am going to put this in as Plaintiffs' general Exhibit Number 7.

The Court:

You mean plaintiffs instead of T. C. I.?

The Clerk:

Just call it Plaintiffs' Number 7, if you haven't any objection.

Mr. Burr:

Yes, sir, Plaintiffs' Number 7.

Mr. Brodie:

May I ask if you are offering the entire document?

Mr. Burr:

I am offering only certan sections, but if anybody raises the point, I will offer the entire document, I don't want anything technical in this case.

If they object because I don't offer all, I will offer all.

(Thereupon the document referred to in Section d-2 of the pre-trial order, being a publication of the United States Department of the Interior, entitled "Iron Ore, Pig Iron, Ferro-Alloys, and Steel," by Robert H. Ridgway and H. W. Davis, and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939," was marked Plaintiffs' Exhibit No. 7.)

Mr. Burr:

On page 550, the part of the article, and the chart and the graph showing the men employed and output per man at mines.

And on page 553, the same information in reference to the mines in the southeastern district, including Alabama.

The Court:

Showing the number of men employed in the southeastern district?

Mr. Burr:

Yes, sir. I will read it to Your Honor:

"The largest and most consistent producing mines in the Southeastern district are in Jefferson County, Alabama, where 3,803 men working 6,058,805 man hours in 1938 produced 3,970,604 tons of merchantable ore," and so on.

And then particularly on page 554 the summary which shows the average number of men employed in iron ore mines all over the United States, and which shows that in the Southeastern District, which includes Alabama, Georgia, Tennessee and Virginia, the number employed was 4,356, and the total number for the entire United States was 19,788.

All right, sir. That is that one.

Now, we offer next the Number 12—

The Court:

Plaintiffs' General 12?

Mr. Burr:

Plaintiff's General 12.

The Court:

The other was 7?

Mr. Burr:

That is right, but I was using the numbers in the pretrial order.

The Court:

Plaintiffs' General Exhibit Number 12?

Mr. Burr:

Number 12, which appears in pre-trial item Number 10.

(Thereupon the publication referred to in Section d-10 of the pre-trial order, and which is a publication of the United States Department of the Interior, entitled "Bituminous Coal," by M. E. McMilian, R. L. Anderson and W. H. Young, and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939, with final statistics for 1938," United States Government Printing Office, Washington, 1940, was thereupon marked for identification "Plaintiffs' Exhibit No. 12.")

Mr. Burr:

In the same way we offer the following portions of that. It is in reference to the production—number of men employed in the coal mines—bituminous coal mines in the United States.

The Court:

Page what?

Mr. Burr:

The other was the iron ore mines. This is the coal mines in the bituminous field.

Mr. Smith:

We object to that right now.

Mr. Burr:

All right, sir. I am very glad to have you object. Do you want to stay out of the coal mines or go in?

Mr. Harris:

I understood I was going to take them and make my objections tomorrow morning. I am going to object to coal mines or anything pertaining to coal mines coming in evidence.

Mr. Burr:
It shows—

The Court:
What page?

Mr. Burr:
774. It shows the output of bituminous coal in 1939 was 393,065,000 tons, a 13 percent increase over 1938, and then on page 799,—no, it is on page 800—

Mr. Brodie:
Page 800?

Mr. Burr:
Yes, sir, under "Man-days of Labor"—

Mr. Harris:
Well, I don't have to look at that document. I object to it now.

Mr. Burr:
And over on page 709, which gives a chart and shows the men employed, shows an average of 441,000—

The Court:
Is that 799?

Mr. Burr:
Yes, sir, 799.

The Court:
An average of—

Mr. Burr:
441,333 men employed in coal mines in 1938.

Mr. Harris:
That entire pamphlet seems to relate to coal mines?

Mr. Burr:
Yes, sir.

Mr. Harris:
Then I object to it now.

The Court:
Sustained.

Mr. Burr:
All right, sir.

The next one in the same book, relating to coal mines, is production, men employed, days operated and output per man per day at bituminous coal mines in specified states and counties in 1938 of Alabama, which shows that—number of employees at coal mines in 1938 was 18,339.

Mr. Harris:
We object.

Mr. Burr:
If I make a mistake in giving these figures, of course the exhibit speaks for itself.

Mr. Brodie:
What page?

Mr. Burr:
814.

The Court:
Sustained.

Mr. Burr:

We offer the entire tables beginning on page 814, which carries facts for all the coal mines, through the summary, after you get to West Virginia, which is on page 828, and which shows a total production of—well, I will not read it. It is getting too much like the national debt. Anyway, it is in there.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

Now, the next is Plaintiffs' General Exhibit Number 13, which is identified in the—Well, I don't find that right now. I think it is number 11 of the pretrial order.

It relates exclusively to the anthracite coal of the United States, and it shows the number of men employed in the anthracite field in 1938, and that information appears particularly on pages 847, 849, 859 and 860.

Mr. Harris:

I object to that now.

The Court:

Sustained.

(Thereupon a document identified in Section d-10 of the pre-trial order, being a publication of the United States Department of the Interior, entitled "Pennsylvania Anthracite," by M. Van Siclen, L. Mann and J. R. Bradley, and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939," United States Government Printing Office, Washington, 1940, was thereupon marked for identification "Plaintiffs' Exhibit No. 13.)

Mr. Burr:
We offer now Plaintiffs General Exhibit Number 13-A, which also related to production—

The Court:
General Exhibit—

Mr. Burr:
13-A, "Production, Stocks and Consumption of Coal," and which is identified in item 12 of the pre-trial agreement.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
And we will particularly offer Table Number 2.

Mr. Harris:
And we object to Table Number 2.

The Court:
That is as to coal?

Mr. Burr:
Yes, sir, that is as to coal.

The Court:
I sustain the objection.

Mr. Burr:
That shows what it was in 19—

The Court:
What is that number?

The Clerk:
That is Plaintiffs' 13-A.

The Court:
I thought that was a new one.

Mr. Harris:
That is a specific portion of the general 13.

The Court:
All right.

(Thereupon a document identified in Section d-12 of the pre-trial order, being a publication of the United States Department of the Interior, Bituminous Coal Division, Weekly Coal Report, Number W. C. R. 1231, dated February 15, 1941, and entitled "Production, Stocks and Consumption of Coal," was thereupon marked for identification Plaintiffs' Exhibit No. 13-A.)

Mr. Burr:
Now, we next offer Plaintiffs General Exhibit Number 14, which relates to item 13 in the pre-trial order, and which is the approved code, number 24, Registry Number 702-45 of the National Recovery Administration, "Code of Fair Competition for the Bituminous Coal Industry," as approved September 18, 1933.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:

And carrying with it the approval of the President as being in compliance with Title I of the N. R. A., and we offer particularly and specifically and separately from the entire Code the portion appearing on page—the President's approval of it appearing on pages 323 and 324, with the approval recommended by Hugh S. Johnson, Administrator, and the White House approval dated September 18, 1933, and we offer particularly that portion of the Executive Order which recites it is in full compliance with Title I of the N. R. A. Act, and particularly we offer the definition which appears on page 327 under the Title "Article 3: Maximum hours of labor."

The Clerk:

That will be Plaintiffs Exhibit 14.

Mr. Harris:

We object to each part of it.

Mr. Burr:

And particularly we offer that part of it where it says;

"Seven hours of labor shall constitute a day's work, and this means seven hours work at the usual working places for all classes of labor."

Mr. Harris:

We object.

The Court:

Sustained as to each one of them.

(Thereupon the document referred to in Section d-13 of the pretrial order, and being the Code of Fair Competition for the Bituminous Coal Industry of the National Recovery Administration, Approved Code No. 24, Registry

No. 702-45, as approved September 18, 1933, was marked for identification Plaintiffs' Exhibit No. 14.)

Mr. Burr:

Now, we offer next, marking it the same as in the pretrial agreement—No, I don't believe that was in the pretrial agreement.

The Clerk:

Make it Plaintiffs' Exhibit 25.

Mr. Burr:

The joint statement or letter directed to Colonel Philip B. Fleming, Administrator, Wage and Hour Division, Department of Labor, Washington, D. C., dated July 9, 1940, and signed by United Mine Workers of America by Earl E. Houck, Director of the Legal Department, and for the operators by W. L. Robison, Chairman, and four others as the Appalachian Joint Conference Negotiating Committee, which is the document given publicity by the Administrator as admitted in the answers to interrogatories.

The Court:

That pertains to coal?

Mr. Burr:

Yes, sir. It is in the brief I read to Your Honor why it should be on face to face basis.

Mr. Harris:

We object to that.

The Court:

Objection sustained. That is the Plaintiffs' General Exhibit 25?

The Clerk:

Yes, sir.

(Thereupon a document dated 1617 Pennsylvania Boulevard, Philadelphia, Pennsylvania, July 9, 1940, and addressed to Colonel Philip B. Fleming, Administrator, Wage and Hour Division, Department of Labor, Washington, D. C., and signed, "For the United Mine Workers of America, Earl E. Houck, Director of the Legal Department," and "For the Operators, W. L. Robison, Chairman, Charles O'Neill, L. T. Putman, L. C. Gunter and G. D. A. Morrow, Appalachian Joint Conference Negotiating Committee," was marked for identification Plaintiffs Exhibit No. 25.)

Mr. Burr:
All right, sir.

This will be Plaintiffs' General Exhibit 4-B as referred to in—referred to in d-1 of the pretrial agreement.

This is the Administrator's ruling on—headed, "Two Mining Determinations Announced," release 928, Saturday, July 27, 1940.

We offer that portion of it which appears on pages 2 and 3 and which—in which Colonel Fleming announces the—an interpretation of this Section 7 as relating to the bituminous coal mining industry that I refererd to in the argument this morning.

Mr. Harris:
We object.

The Court:
Sustained. What is that one?

The Clerk:
Exhibit 4-B.

The Court:
4-B?

The Clerk:
Yes, sir.

The Court:
Sustained.

(Thereupon the document referred to in Section d-1 of the pretrial order, entitled, "Two Mining Determinations Announced," and being release Number 928 of the Wage and Hour Division of the United States Department of Labor dated Saturday, July 27, 1940, was thereupon marked for identification Plaintiffs Exhibit No. 4-B.)

Mr. Burr:
We offer next the Plaintiffs' General Exhibit Number 4-C, which is the article identified in the pretrial agreement as d-1, and which is a release by the Administrator dated September 18, 1940, and which relates—which is an address delivered by the Administrator before the American Mining Congress at Colorado Springs, and we offer separately that portion of it which begins with:

"I want to list some of the principal ones as a basis, at least, for further discussion."

"1. Must the time spent by the underground working in traveling from the portal to the face be counted as time worked?

"2. Must time spent at lunch underground be considered as time worked?"

And then the other portions which discuss that proposition and announce his views and conclusions.

The Court:
Is that with reference to coal?

Mr. Burr:

Yes, sir, it is with reference to coal,—it is in a way. It is general, I guess.

The Court:

Sustain it.

Mr. Burr:

It is general. In other words, he announces a ruling for coal, but states that the same will be reasonable for all other industries where custom justifies it.

Mr. Harris:

We object.

The Court:

Sustain it.

(Thereupon a document referred to in Section d-1 of the pre-trial order and entitled "Address Scheduled for Delivery by Colonel Philip B. Fleming, Administrator Wage and Hour Division, United Stated Department of Labor, before the American Mining Congress, Colorado Spring, Colorado, Wednesday, September 18, 1940," and bearing the notation, "For release Wednesday, September 18, 1940," was thereupon marked for identification Plaintiffs' Exhibit No. 4-C.)

Mr. Burr:

Now, we offer next General Exhibit No. 6,—that part of it which sets out a letter from Colonel Philip B. Fleming to the Editor of the Engineering and Mining Journal, in which he refers to his two rulings, one as to coal and the other as to iron ore,—

Mr. Harris:

We object to that private letter.—

Mr. Burr:

—dated April, 1941, and which he states in his answers to interrogatories is a correct copy of his explanation of his ruling.

Mr. Harris:

I haven't answered any interrogatories, and my clients haven't offered any.

The Court:

I sustain it.

(Thereupon an article appearing in the April, 1941 issue of the Engineering and Mining Journal, entitled, "Collar-to-collar vs. Face-to-face," was marked for identification Plaintiffs' Exhibit No. 6.)

Mr. Burr:

Your Honor understands we are offering—we had better make that clear right now,—that we offer each of these papers separately against each defendant and each class of defendants.

Mr. Brodie:

At the present time I am objecting. I don't know what it is. I would like to see it. I am reserving an objection.

The Court:

You might reserve it until tomorrow morning.

Mr. Burr, you have offered it?

Mr. Burr:

Yes, sir, I have offered it.

The Court:

And tomorrow morning you let the Court know whether you object to it and the grounds.

Mr. Brodie:
Yes, sir.

Mr. Harris:
But I have indicated as I went along—

The Court:
Yes; I have sustained your objection.

Mr. Burr:
Now, I want to offer next in reference to this coal matter the various depositions that have been taken in other parts of the country.

Mr. Harris:
Now, as to each deposition dealing with coal, wherever taken, we object, if the Court pleases, to each deposition, separately and severally, on coal, just as we do to anything testified to by these witnesses.

The Court:
I sustain the objection.

Mr. Burr:
We offer these separately on behalf of the Plaintiffs and separately and severally as against each defendant and each class of defendants.

Mr. Smith:
We want the same objection noted.

The Court:
Yes, sir.

Mr. Smith:
I understand it goes along, but I want it noted.

The Court:
Sustain the objection.

Mr. Brodie:
We have filed written objections to those depositions to coal operators.

The Court:
Depositions of coal operators?

Mr. Brodie:
Yes, sir.

Mr. Burr:
I didn't understand.

The Court:
He said he had filed objections to that part of the written depositions to coal operators.

Mr. Brodie:
Yes, sir.

Mr. Burr:
Fleming did, and he is the only one as far as I can recall.

The Court:
I haven't passed on the written objections, but you are objecting now?

Mr. Brodie:
Yes, sir.

The Court:
I sustain the objection.

Mr. Harris:

I don't have to file written objections. I object.

The Court:

No. I don't see any necessity for passing on his written objections.

Mr. Burr:

It is not necessary. Your Honor is going to sustain it?

The Court:

Yes, sir.

Mr. Brodie:

I call your attention—

The Court:

I sustain the objection, whether it is Mr. Harris' or Judge Smith's.

Mr. Burr:

The first one I offer is the deposition of W. J. Jenkins, and, separately and severally, each portion of the deposition.

The Clerk:

With the exhibits attached to it? There are seven exhibits.

Mr. Burr:

Yes, sir, separately, each exhibit we offer.

These seven exhibits are the wage agreements going back from the present time back in the future which show—

Mr. Harris:

Back in the past?

Mr. Burr:

Back in the past, I mean, which show the custom, and that contracts were in existence at that time on the face to face basis, defining it in the contracts.

Mr. Harris:

That is in the coal industry?

Mr. Burr:

It is in the coal industry, yes, sir.

The Court:

Is that a coal exhibit?

Mr. Burr:

Yes, sir, it is, I think, the Appalachian—No, it is in St. Louis.

Mr. Harris:

We object.

The Court:

I sustain the objection.

Mr. Harris:

And to the exhibits also?

The Court:

Yes, sir, I sustain the objection to the exhibits also.

The Clerk:

That will be Plaintiffs' General Exhibit No. 26.

(Thereupon the deposition of W. J. Jenkins, together with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 26.)

Mr. Burr:
Next we are offering the deposition of L. C. Gunter of Knoxville.

The Clerk:
General Exhibit 27.

Mr. Harris:
That is coal also?

Mr. Burr:
Yes, sir, it is coal. It is the deposition of L. C. Gunter, and we offer separately and severally each separate and several answer and separately and severally each exhibit referred to.

Mr. Harris:
And we object.

Mr. Burr:
It relates exclusively to coal mines.

The Court:
It relates exclusively to coal mines?

Mr. Burr:
Yes, sir. It covers what has been referred to, I think, as the Southern Appalachian field,—our competitors up here in Tennessee.

The Court:
Is there any objection to that?

Mr. Harris:
Yes, sir, we objected.

The Court:
I didn't hear it.

Mr. Harris:
Yes, sir; we object. I beg your pardon.

The Court:
Sustain it.

Mr. Brodie:
We object too.

The Court:
Sustain the objection.

(Thereupon the deposition of L. C. Gunter, with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 27.)

Mr. Burr:
Next the deposition of Francis J. Keegan—

The Clerk:
Exhibit Number 28.

Mr. Burr:
—who is another operator in Kansas.

The Court:
Is that a coal mine?

Mr. Burr:
Yes, sir, a coal mine.

We offer that, separately and severally, as to each separate question and answer, and as to each separate and several exhibit attached.

Mr. Smith:
And we object.

The Court:
I sustain the objection.

(Thereupon the deposition of Francis J. Keegan, with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 28.)

Mr. Burr:
The next one is the deposition of D. C. Kennedy, which relates to coal mines and coal customs and coal agreements in the Appalachian and Kanawah Districts.

The Clerk:
Number 29.

Mr. Harris:
And we object.

The Court:
Sustained.

(Thereupon the deposition of D. C. Kennedy, with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 29.)

Mr. Burr:
You understand we are not offering the answers to the cross interrogatories. As I understand, they are objecting and that will go out.

That is all the depositions, if the Court please.

If Your Honor please, we want to offer next—we are prepared to make the proof, and Your Honor sustains it, I

think, on the ground it is incompetent and irrelevant,—we offer next contracts beginning with the one made back January 28, 1898.

The Court:
What is that?

Mr. Burr:
They are coal contracts beginning on January 28, 1898.

The Court:
In another section of the country?

Mr. Burr:
They may be in the same section, but these are all of them, cover all the coal mining operations.

The Court:
That is with reference to coal mines?

Mr. Burr:
Yes, sir, and shows in each contract has these words, beginning back in 1898, and on down to the present time, the definition—all these contracts, hundreds of them, expressly exclude traveling time, and says, "Hours work, means eight hours work at the usual working places."

Mr. Harris:
We object to each contract, wherever made, the section it is made in.

Mr. Burr:
Your objection is on the ground of relevancy and materiality? You are not raising any question—

Mr. Harris:
I am assuming they are correct copies of the contracts.

Mr. Burr:
Yes, sir. We had these made in Washington.

Mr. Harris:
We object.

The Court:
I will sustain the objection.

Mr. Burr:
Here is a complete set, and we will put it all in one exhibit and mark it Plaintiffs' Exhibit so and so.

The Clerk:
Plaintiffs' Exhibit Number 30.

(Thereupon a great number of contracts between the United Mine Workers of America and various coal operating companies was marked for identification Plaintiffs' Exhibit No. 30.)

Mr. Harris:
I want to make it clear—We are proceeding unusually fast. Undoubtedly, in an industry of the magnitude of the coal industry there are thousands of contracts. I don't want to put Mr. Burr to the trouble of going off and proving those are the contracts.

The Court:
You are not requiring authentication of them?

Mr. Harris:
I am not requiring authentication of all those contracts, and then I am putting in every objection I can, but not on that particular point.

Mr. Burr:
That is all right.

Mr. Brodie:

May I say to the Court for the purpose of the offer of proof we waive the authentication of the contracts.

Mr. Burr:

That is what it is.

Mr. Harris:

That is what it is.

Mr. Burr:

It will appear, when I make the record, when I have to make it,—I hope I don't,—it will appear these are correct copies.

The Court:

That is right.

Mr. Burr:

The two I particularly offer are those which involve—I don't know whether Your Honor has changed your ruling, but you ought to after you get all this before you. This goes back to 1917 and shows as far back as that time this question, including the question—the very question we have here, of the day's work was submitted by the coal industry to a board of arbitration, and Mr. Rembrandt Peale was selected to represent the United States Fuel Administration.

The first one we offer—

The Clerk:

Exhibit 31.

Mr. Burr:

Is the report which defines the work day.

Mr. Harris:
We object.

Mr. Brodie:
We object.

The Court:
That is as to coal mines?

Mr. Burr:
Yes, sir.

The Court:
Sustain the objection of the defendants and the intervener.

(Thereupon a document entitled "Recommendations of United States Fuel Administrator, December 17, 1917," was marked for identification Plaintiffs' Exhibit No. 31.)

Mr. Burr:
The next one is the United States Fuel Administration agreement and award of arbitration committee.

The Clerk:
Plaintiffs' Exhibit Number 32.

Mr. Harris:
We object to that.

The Court:
The defendants object?

Mr. Harris:
All of them.

The Court:
Sustained.

(Thereupon a document entitled "United States Fuel Administration Agreement and Award of Arbitration Committee for Mines in Southeastern Kentucky East Tennessee, Knoxville, Tennessee, November 10, 1917," was marked for identification Plaintiffs' Exhibit No. 32.)

Mr. Burr:
Now, if Your Honor please, we want to make our next offer of proof,—some of this testimony, I think, will be relevant,—but before I do that, may I ask Mr. Hassler a few questions about the ore mine operations?

The Court:
Yes, sir.

Mr. Burr:
I will go back to that before he leaves the stand.

(By Mr. Burr):
Q. Mr. Hassler, I believe you stated—what was your title in your relationship to the men? I have forgotten?
A. Superintendent of industrial relations.
Q. In that capacity was it part of your duties to participate in all the various negotiations that were had with these various committees of the Union?
A. Most of them, yes, sir.
Q. You are familiar, are you not, with the exhibits which were offered in evidence during Mr. Norman Thompson's testimony—
A. Yes, sir.
Q. —which set out the various proposals made from time to time by these committees for contracts?
A. That is right. They were take from my files.

Q. I will ask you to state whether or not at any time—Well, first did you attend the meetings that were held from time to time with the committee of this Union since it was organized in 1934?

A. Yes, sir, I attended many meetings, not all of them.

Q. With the exception of the proposals which have been identified in Mr. Thompson's evidence as having been submitted in writing, I will ask you to state whether or not at any time any of those committees or any other employee has ever, in your presence, suggested or requested that they be paid for transportation time in going to and from their working places?

Mr. Harris:
That is limited to ore mines?

Mr. Burr:
Sure. I have gone on from coal.

The Court:
That is ore mines.

Mr. Harris:
As I understand, my original objection way back yonder holds good?

The Court:
Yes, sir, all back of October 24, 1938.

Mr. Harris:
Yes, sir.

A. Yes, sir; there were three instances, I think, in those proposed demands that they be paid for one way.

Q. Those were the only three?

A. Yes, sir.

Q. No others presented?

A. Not while I was there.

Q. When those proposals were presented, after presenting them in writing, in the discussions in reference to them and the other complaints there, did they take up those questions in those discussions in any way?

A. No, sir.

Q. Nothing said more than making the bare presentment of it?

A. That is all.

Q. Is that right?

A. Yes, sir.

Q. Now, just to save time, I will ask you if you heard Mr. Norman Thompson's testimony in reference to the customs and practices and conditions in the ore mines of the Republic Company?

A. Yes, sir, I heard it.

Q. Are the statements he made correct?

Mr. Harris:

I object, if Your Honor please.

The Court:

Overruled.

Mr. Burr:

If you want me to go over it section by section I will be glad to do it.

Mr. Harris:

I know, but I objected to a great part of his testimony.

The Court:

Overruled.

Mr. Burr:

You have your objection to that.

Q. Are the statements he made as to conditions there in the mines substantially correct?

A. Substantially, yes, sir.

Q. Of course, there may be some details, but it is substantially correct?

A. Substantially correct.

Mr. Burr:

I believe that is all, Mr. Hassler.

The Court:

Do you want to cross examine him?

Mr. Harris:

No, sir.

The Court:

All right.

Mr. Smith:

No, sir.

(Witness excused.)

Mr. Burr:

Now, Judge, in order that we may have the record absolutely complete, on all these offers we have made and exceptions which I—the offers are being made separately and severally by each plaintiff; you understand that?

The Court:

You stated that before.

Mr. Burr:

Our exception is separately and severally as to each ruling.

The Court:
Each ruling.

Mr. Burr:
And each class of defendants.

The Court:
Each class of defendants.

Mr. Burr:
And separately and severally as to each part of each offer so there can't be any doubt about it.

The Court:
That is understood.

Mr. Burr:
That is understood. Now, Judge, I started—this is off the record.

(Here followed an off the record discussion.)

The Court:
We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:10 P. M., July 21, 1941, an adjournment was had to 9:00 A. M., July 22, 1941.)

July 22, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
All right, gentlemen.

Mr. Harris:
There was one exhibit offered yesterday, Number 7, I believe, that I wanted to look over, and as to this exhibit—

The Court:
Was it 7?

Mr. Harris:
It is marked Plaintiffs Exhibit Number 7.

The Court:
Yes.

Mr. Harris:
As to this exhibit, the unions affiliated with the C. I. O. and the individuals that I represent—my firm and Mr. Lipscomb represent, they object to each part of the exhibit, separately and severally, on the ground that although it deals with ore mines, the exhibit introduced and the pages introduced for instance, deal with Michigan, Minnesota, Wisconsin, Alabama, Georgia, Tennessee, Virginia, New Jersey, New York, Pennsylvania, California, Missouri, New Mexico, Utah, Washington and Wyoming, and it is our opinion that what happens in all those distant states, whether it is an ore mine or not has no relevancy and is of no assistance to the Court in determining when the work time begins for these men in the Alabama ore mines; that it wouldn't be relevant on a custom, if any custom were material, because the custom in those distant states, even if it amounted to anything, would have to be brought home to these individuals, and these individuals recognize it here and do it voluntarily, so we submit, as to this exhibit and each particular page offered, it is subject to the objection of being illegal, irrelevant, immaterial and incompetent and outside the issues in this case.

The Court:
Does that have any reference to the Alabama ore mines?

Mr. Burr:
We want to be heard on that.

Mr. Smith:
We offer the same objection.

Mr. Burr:
We want to see what the other objections are.

Mr. Brodie:
I have no objection to those statistics.

The Court:
What is that?

Mr. Brodie:
I have no objection as to those statistics.

Mr. Burr:
Since it is in as to one, except to state to Your Honor what our position is on the matter, as far as his objection is concerned, I do not care to say anything.

What he objects to relates solely to iron ore mines in the United States. Your Honor ruled yesterday you wouldn't go into the coal mines here or elsewhere. You certainly didn't put it on the basis it was national because you excluded the evidence as to coal mines within four to eight miles of our ore mines. We, therefore, assumed Your Honor's idea was that the coal industry was a different industry and evidence as to that industry couldn't be heard in this case.

Now, this exhibit relates to iron ore mines in the United States.

As I pointed out yesterday, what we have to determine here is not the individual claims of these employees. That is not here before this Court at this time. The sole question before the Court at this time is whether or not the traveling time per se is a part of the work time. That is the question we have to consider.

Now, in considering that question it has to be considered on the basis of what Congress intended to do. That is raised by the pleadings, because if Your Honor please, in the pleadings we specifically eliminated any question of labor and confined it to traveling time.

Subdivision (2) of the pretrial order reads as follows:

"In reference to 'a' above, the defendants contend that the work week covers all time from portal to portal as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out."

So, that presents clearly the sole proposition as to whether Congress, in reference to Alabama mines, intended, when it passed that law, to include traveling time as traveling time as a part of the day's work. Now, if that is what we are trying to find out, then certainly, as now admitted by the Administrator by not objecting to this exhibit, then certainly any exhibit that shows the conditions that exist as to ore mines—not coal mines, we have passed that. You have ruled on that, and while I disagree with you I accept the ruling. That puts us up to the question whether evidence that has to do with ore mines in the United States is material evidence. It is not a question of estoppel or waiver. It is a question of whether Colonel Harris' clients are bound by it. It is evidence for Your Honor to consider to assist you in working out what is the workweek. We have a right, and I think we would be derelict in our duty to the Court if we didn't put before the Court the overall situation in the ore mines of the United States so we may know what Congress had in mind when it passed this law.

The Court:

I overrule the objection.

Mr. Harris:

May I call Your Honor's attention to the fact the items covered in this exhibit are statistics? It isn't a question—If Your Honor will indulge me just a second to make my point clear,—it isn't a question of whether traveling time per se, and that is just a phrase, something to catch the mind and hold it and keep us from looking at the real problem. The real problem, according to these men—when does their work time begin; in the employer-employee relationship, when does this work time begin?

All this evidence where he offers some production figures back in the year 1938 in different mines in the United States does not aid us in determining that question.

In order that the Court may have clearly before it—the fact. Mr. Brodie doesn't object to something,—the Administrator's lawyer and the Administrator may have their ideas of what is the question. Mr. Burr has his and I have mine. For instance, depositions that they have taken, whether Mr. Burr took them or whether the Administrator took them, doesn't make a particle of difference to me. I am not agreeing with Mr. Burr if he offers them, nor am I agreeing with Mr. Brodie if he offers them.

The question that is before this Court, and the question that has been before this Court from the beginning of this trial, and will be before this Court to the end of this trial, is what constitutes work time for these ore miners in Alabama, and I am objecting to anything that I think takes away from that fundamental problem.

The Court:

I overrule the objection.

Mr. Harris:

We except.

(Thereupon Plaintiffs' Exhibit No. 7, heretofore marked for identification, was received in evidence.)

Mr. Burr:
All right; we will take Mr.—did you have anything else?

Mr. Brodie:
There were some other documents to which we reserved objections.

Mr. Burr:
I thought you had objected to everything else.

Mr. Brodie:
I think everything else except Exhibit 6. Your Honor stated—I didn't know what that was. It was Exhibit 6. I objected to that.

The Court:
I believe you did.

Mr. Burr:
What is that? I don't remember what Exhibit 6 was.

Mr. Brodie:
The article in the Mining and Engineering Journal.

Mr. Burr:
It is just the front part, the letter, we offer.

Mr. Harris:
Your Honor sustained object to that one, I thought, yesterday. I may be wrong on that.

The Court:
I believe so. The Court reporters might refer to that.

Mr. Harris:
I think I have that part of the record.

The Court:
That part of the record?

Mr. Burr:
I don't recall. There were some reserved and some not.

The Court:
I don't either, Mr. Burr.

Mr. Harris:
My recollection is you sustained it for me and gave him the privilege of looking it over—

The Court:
I think that accounts for the reason it isn't shown on my notes.

Mr. Harris:
Yes, sir.

The Court:
It wasn't in last night.

Mr. Burr:
We can cure it by Your Honor ruling on it now.

The Court:
All right.

Mr. Burr:
That will fix it all right.

Mr. Harris:

I again object on the same theory I did yesterday. It is irrelevant, illegal and incompetent.

Mr. Quinn:

On the further ground it wasn't in any official capacity, and only a letter written to a convention outside of his official duties and responsibilities.

Mr. Burr:

There is such a rule of law admissions are admissible in evidence whether they are official or not official.

Mr. Smith:

What a man says at a convention, I don't think is an admission.

Mr. Burr:

The Judge has ruled against that a hundred times, to my knowledge, on the bench.

The Court:

Mr. Brodie speaking now.

Mr. Burr:

Yes, sir.

Mr. Brodie:

We object on a number of grounds. First, it is immaterial and irrelevant on the question in this case.

Your Honor has previously ruled that the opinion of the Administrator, —that any of the opinions expressed by the Administrator are not relevant to the question when does the work day start and end for these miners.

Secondly, Your Honor has ruled, on a motion addressed to interrogatories, that this was immaterial and irrelevant.

That, I conceive to be the law of the case, using that term in its technical signification.

Thirdly, it is not admissible as an admission against the Administrator, because the correctness or incorrectness of any opinion expressed by the Administrator is not the issue here.

If this were admissible as an admission it would have to be so only upon a principle that what the Administrator said with respect to his opinion regarding the law binds this Court, and if that were so, then the Administrator's opinion with respect to iron mines, as to which we claim no binding significance, would also bind the Court, and so it is not admissible as an admission, nor can it be admissible as an attempt to estop the government because the government cannot be estopped by statements made by an administrative official. He may be entirely wrong; he may be entirely right; that is immaterial. The question is which must be decided by Your Honor, when does the work day start and end for these miners.

The statute says each employer shall pay to each of his employees who is employed for more than a certain number of hours—the crucial word there is "employed", and it is for this Court to determine when the employment starts, and what the Administrator has said in one instance or another, and particularly in a matter of this sort, is not admissible. It is immaterial.

Mr. Harris:

I have the record here on what happened yesterday.

The Court:

That is right in line—

Mr. Brodie:

It says—

The Court:

It doesn't make any difference. We are going at it anew.

Mr. Brodie:

It is a letter by the Administrator in which he says I have been asked, "to reconcile, if I can, the statements I made in my speech before the American Mining Congress on September 18, 1940, with my recent approval of an examiner's report announcing our opinion that in effect hours worked in underground metal mining include all hours spent portal to portal minus the lunch period."

The Court:

I don't think that is admissible.

Will you let me have that just a minute?

Mr. Brodie:

Yes, sir.

Mr. Burr:

Your Honor, I am not going to make an argument in reference to the admissibility of this exhibit except to state, in fairness to the Court, why I think it is admissible, and then I will take my exception without Your Honor changes his mind.

This is a letter by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, Department of Labor, in which he takes up and discusses his ruling, first, in the bituminous coal case, which Your Honor has decided was not admissible here, and then his ruling which is before the Court by the pleadings in this matter, —opinion, I should say, instead of ruling.

Now, we anticipate—Of course, if I am wrong about that, what I have to say hasn't got any relevancy,—we anticipate when this case is finally argued, the Adminis-

trator's counsel, under the American Trucking Association Case is going to ask the Court to give weight to the Administrator's ruling.

Now, assuming that will be done, or that the Court, without that, will be inclined to give weight to the Administrator's opinion, we think this letter shows, when read very clearly the opinion is not entitled to any weight. He says:

"I am afraid that I must take the blame for making a misleading statement."

That is all through it. That is what we think the exhibit is admissible for.

The Court:
I sustain the objection.

Mr. Burr:
We except, and except separately to sustaining it as to the part that relates to the iron ore mines.

The Court:
Objection sustained.

Mr. Burr:
Except.

The Court:
Objection of all defendants and intervener is sustained.

Mr. Burr:
And we except separately and severally.

There is one thing I want to bring out. I was dumbfounded when Mr. Harris called my attention to a parenthetical remark in the pleadings that the Spaulding Mine

was not included. I was dumbfounded and astonished. I later found out how that occurred.

I wrote the Tennessee Company bill first, and I tried to make it all inclusive, and I turned over to my stenographer the Tennessee Company bill and told her to eliminate from it anything that related to the Tennessee Company and to copy in the bill the portions of the statements from the Republic Company which appeared before the Administrator here last fall, and that part was in there. I will, at the proper time, amend the Republic bill to strike out that line and include the Spaulding mine. I think in fairness to the miners there it ought to be in there.

Mr. Patterson says he called my attention to that paragraph but I didn't read the parenthetical remark at that time.

At the proper time I will amend the bill to take care of that.

The Court:

All right.

Mr. Burr:

I will take Mr. Lacey.

2084 W. M. LACEY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. This is Mr. W. M. Lacey, is it?

A. Yes, sir.

Q. Mr. Lacey, how old are you, please, sir?

A. Fifty-four.

Q. You are a resident of Jefferson County?

A. Yes, sir.

Q. Were you born in this county and have you resided here off and on all your life?

A. I was born down at Woodward.

Q. Now, I want you, please, sir, to give to the Court your mining experience in Alabama and elsewhere, just giving the experience without going into detail, and also your colleges you attended, if any, and the degrees you obtained,—just a brief resume of your professional life.

A. I started in 1903 working on the floating gang at the Woodward Iron Company, and on the tipple, and went from—.

Q. Now, what sort of mine was that?

A. Ore mine,—Number 1 Woodward ore mine.

Q. Ore mine? How old were you then, Mr. Lacey?

A. 16.

Q. 16?

A. Yes, sir.

Q. All right, sir.

A. In September, 1903, I entered Auburn and took a course in mining engineering and finished in 1907.

During the vacations I worked at the Woodward Iron Company on the tipple and fired an engine.

In June, 1907, I went to work with the Engineering Department of the Woodward Iron Company as a rodman.

The Court:

As what?

The Witness:

As rodman.

Q. As rodman?

A. Yes, sir.

Q. Did you finish your course at Auburn?

A. Yes, sir.

Q. Did you get a degree there?

A. Yes, sir.

Q. What degree did you get?

A. I got a degree of B. S. in mining engineering in 1907, and an M. S. degree in 1932.

Q. You say in June, 1907, you went to work with the engineering department of the Woodward Iron Company as rodman?

A. Yes, sir.

Q. How long did you work as that?

A. For the next five years I worked as rodman and transitman and assistant engineer between the ore mines and coal mines.

Q. That was first one day in the coal mines and the next in the ore mines?

A. Yes, sir. The last year, 1912 or 1913, I was assistant superintendent at Dolomite.

Q. While you were with the engineering department, you did what?

A. I measured the progress of the mining, made maps and laid out work.

Q. Then you say you went to Dolomite as Assistant Superintendent?

A. Yes, sir.

Q. Was that an ore or coal mine?

A. Coal mine.

Q. How far was that from the ore mine?

Mr. Harris.

We object to that. That is something along the same lines we had yesterday. I haven't objected to the part qualifying the witness, but when you get into the details of coal mines, we object.

The Court:

I sustain the objection.

Mr. Burr:

—We except and offer to prove the Dolomite mine—How far is it from the closest ore mine, so I can make my offer right?

The Witness:

About six miles.

Mr. Burr:

—about six miles from the ore mine in which he had worked.

Mr. Harris:

We object.

The Court:

That is off the record.

Mr. Burr:

Yes, sir, that is the offer of proof.

Mr. Harris:

He is now offering it, and I object.

The Court:

What is your offer?

Mr. Burr:

I offer to prove the Dolomite coal mine at which he worked was about six miles from the ore mine where he worked.

Mr. Harris:

We object.

The Court:

Sustain the objection.

Q. After you left Dolomite, where did you go?

A. About September, 1916, I went to work for Mr. H. L. Badham and Mr. W. S. Lovell, and spent about three years as superintendent at Belle Ellen and Aldrich coal mines.

Q. Are those coal mines?

A. Yes, sir.

Q. Are they underground or surface mines?

Mr. Harris:

We object to whether they were underground or surface.

The Court:

Overruled. He is just giving his experience.

Mr. Harris:

Except.

A. They were all underground mines.

Q. I didn't hear you.

A. They were all underground mines.

Q. After that, where did you come next?

A. November, 1917, I accepted a position with the Woodward Iron Company as general superintendent of ore mines.

Q. How long did you hold that position?

A. Six years.

Q. What ore mines did you have charge of at that time?

A. Number 1, 2 and 3 Woodward and Sango.

Q. 1, 2 and 3 Woodward were located on the mountain down here?

A. Yes, sir, just to the rear of Lipscomb.

Q. Just to the rear of Lipscomb?

A. Yes, sir.

Q. Where is Sango located?

A. Sango is up in the rear of Ishkooda; you might say in the rear of Powderly.

Q. It is on Red Mountain, of course?

A. Yes, sir.

Q. I want to go back and ask one question with reference to the coal mines at Belle Ellen and Aldrich, which Mr. Harris will probably object to, but I want to prove it.

Mr. Burr:

I might just put it in the form of an offer to save time.

I offer to prove the Belle Ellen mine he referred to was in Bibb County—

Mr. Harris:

We object.

The Witness:

Yes, sir.

Mr. Burr:

A coal mine, and Aldrich was in Shelby county.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Harris:

The witness thought he was talking to him, and answered.

The Court:

I will exclude the answer.

Mr. Burr:
We except.

Q. You gave me the dates you served as superintendent of the ore mines of Woodward Iron Company as from November 1, 1917, to September, 1923?
A. Yes, sir.
Q. In September, 1923, what position did you take up?
A. The DeBardeleben Coal Corporation was formed, and I worked with those people for ten years as general superintendent of their eastern division.
Q. Were they ore mines or coal mines?
A. Coal.
Q. Will you give me the names of the coal mines you served as superintendent of?
A. Empire, Sipsey, Hull and Payne's Bend.

Mr. Burr:
We offer to prove—

Q. Where were those coal mines located?

Mr. Harris:
We object.

The Court:
Sustained.

A. Three of them in Walker County—

Mr. Harris:
We object.

Mr. Burr:
He is telling me. Off the record.

(Here followed an off the record interchange between Mr. Burr and the witness.)

Mr. Burr:
We offer to prove of those mines that Empire, Hull and Sipsey were in Walker County, and Payne's Bend in Jefferson County.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And they are all underground coal mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We except.

Q. 1933 was when the depression hit us?
A. Yes, sir.
Q. What happened to your job down there?
A. My job was abolished.
Q. Where did you go next in any position?
A. I worked as a sales engineer for the Sanford-Day Iron Company at Knoxville, Tennessee, for a year and a half.
Q. What, in a general way, did that job require you to do in the way of visiting the mines?

A. It required me to visit the mines and contact the superintendents or general managers and try to interest them in mine cars, mine car wheels and heavy mining machinery.

Q. In doing that did you go to a mine and stay a little time or stay some time?

A. Sometimes we stayed from a day to a week. We made haulage studies of the mines and estimates of installing—

Q. Well, did they give you access to the records and the payrolls of the mines?

Mr. Harris:

We object to that,—the records he got access to back in 1933 and '34.

The Court:

I sustain the objection.

Mr. Burr:

We except.

Of course, Your Honor knows the question of producing original documents in collateral matters—what we propose to show by him is that he learned from these records they were working on a face to face basis in all these mines.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

We except.

Q. Did you talk with the men while you were in the mines?

Mr. Harris:

We object to that. This is hearsay.

The Court:

Sustained.

Mr. Burr:

Except.

Q. Did you actually see the men at work in the mines?

Mr. Harris:

We object to that. It is immaterial whether he saw men working in Tennessee.

Q. Did you talk to the men at some of these ore mines?

A. No, sir. All the mines I visited outside of Alabama were coal mines.

Mr. Harris:

We move to exclude his statement he talked to coal miners.

The Court:

Sustained.

Mr. Burr:

We except.

We offer to prove he would go in the mines and stay as long as a week at a time and make studies of the haulage equipment and system, make studies of costs of the hauling system they had in operation, and set up an estimate of the cost of equipping the mines with the character of equipment he was trying to put in there; that he had access to and examined the employment records of the company, showing the employees, how their pay was computed, talked to the employees in the mines, saw them go in the mines and leave the mines, saw them

while they were at work in the mines, saw the payrolls, methods of computing and paying the wages of the underground miners, and that these mines were located outside of Alabama,—the ones I am asking about now, in Tennessee, Kentucky, West Virginia or Pennsylvania—

Mr. Harris:
We—

Mr. Burr:
And that all these particular mines were coal mines; that during that entire period of time, in all these mines, the coal miners' wages were computed and were paid on the working place to working place basis.

Mr. Harris:
We object to all of that, if the Court please.

Mr. Burr:
I hadn't quite finished.

Mr. Harris:
I beg your pardon.

Mr. Burr:
And there was no question raised at any time of the transportation time being paid for, and that the workings in those mines at that time were deeper, and we offer to show the depths of them and how deep they were, both as to slopes and as to headings, than the ore mines of Alabama, and that the general system of mining was the same in those mines, those coal mines, as in the ore mines in Alabama.

Mr. Harris:
We object to each part of it, separately and severally.

The Court:
Sustained.

Mr. Burr:
And we except, separately and severally, as to all of it, and each separate part, separately and severally, we offer to prove.

Q. All right, sir. What was your next employment and mining experience after leaving that particular work I just called your attention to?

A. I worked for a year and a half as superintendent of the Aldrich Mine of the Montevallo Coal Mining Company.

Q. That was a coal mine in Shelby County?

Mr. Harris:
We object to that, no matter where it was.

Mr. Burr:
We offer to prove it was in Shelby County.

The Court:
I will let it stay in he worked at that coal mine.

Mr. Burr:
We offer to prove where it was.

Mr. Harris:
We object.

The Court:
I don't think it is material.

Mr. Burr:
I understand Your Honor does not consider it material. I offer to prove it and take an exception.

The Court:
All right.

Q. What was the next mining experience you had after you left the Aldrich coal mines?

A. I was superintendent of the Praco Division of the A. B. C. for about a year from February 1, 1936, to February 22, 1937, which division embraced three coal mines.

Q. What sort of mines were at the Praco Division of the Alabama By-Products Corporation you worked in from February 1, 1936, to February 22, 1937?

A. There were three of them. Number 6 and 7 were slopes and 7½ was a drift.

Q. Were they coal mines or ore mines?

A. Coal mines.

Q. In what county were those coal mines located?

Mr. Harris:
We object to what county those mines were located in.

The Court:
Sustained.

Mr. Burr:
We except and offer to prove they were located in Jefferson County, Alabama.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And offer to prove how far they were from the ore mines involved in this case.

Mr. Harris:
We object.

The Court:
Sustained.

Q. Where did you go next?
A. Went to the Edgewater mine of—
Q. What company operated the Edgewater mine?
A. The Tennessee Company.
Q. Was there any other mine you had charge of besides Edgewater?
A. I had superintendency over Wylam Number 8 for the last three years.
Q. Which one,—Number 8 at Wylam?
A. Yes, sir.
Q. Were all those mines coal mines?
A. Yes, sir.

Mr. Burr:
We offer to prove the Edgewater mine is located in Jefferson County, Alabama, and four or five miles from the ore mines of the Tennessee Company,—

Mr. Harris:
We object.

Mr. Burr:
And that the Wylam Mine is in Jefferson County, Alabama, and about the same distance from the ore mines.

The Court:
Is that all one question?

Mr. Burr:
Yes, sir. I am trying to save time.

Mr. Harris:
We object.

The Court:
Sustained.

Q. What was your next job? That brought you down to July 15, 1941.

A. I went with the Republic Company as general superintendent of coal mines.

Mr. Harris:
What year?

Mr. Burr:
This year.

The Court:
What is your position?

The Witness:
General superintendent of coal mines of the Republic Company.

Q. That was July 15th of this year?
A. Yes, sir.
Q. Where are those coal mines located?

Mr. Harris:
We object to where they are.

The Court:
Sustained.

Mr. Burr:
We except, and offer to prove that they are locatel as testified by Mr. Hassler.

First, I want to direct these questions to coal mines.

I offer to prove, separately and severally, as to each coal mine he was employed at,—I offer to prove in reference to each of those coal mines, separately and severally, the location of the mines, their distance from the ore mines in question here on Red Mountain, the character of mining that is done in each of them; that they are, with the exception of a few drift mines, all underground coal mines, having the same transportation system as is in the ore mines. I offer to show what that system is, so as to avoid any possibility of a comparison, how the men are conducted from the time they go to the bath house, and what they do at the bath house, and what they do in the way of getting lamps, carbide and electric lamps where electric lamps are used, and what they do in the way of depositing and taking up the brass checks as they go in and out of the mines, how they are transported in and out of the mines, the character and description of the cars that they ride on, the character and description of the main haulage ways in which they ride, showing the width and height, showing the clearance distance between the cars they ride on and the roof, and showing the progress of the miner after he reaches the underground loading station to his working place, how he gets to his working place, and the character and condition of the haulage ways on which he walks in going to his working place, and the character and condition of his working place, including the tools that he uses there and the way in which those tools are supplied and distributed, and particularly with reference to them as showing that, with the exception of heavy supplies,—and the way in which the heavy supplies are supplied to them,—the men bring them from the outside in many instances, including picks and shovels and tools of that kind, and that this has been the practice and custom in those mines, —was the practice and custom from October 24, 1938, and

had been for all times previous to that time, since he had been connected with the mining industry, and has continued to be the practice from that time on down to the present time.

And that—And we offer to prove any other conditions that existed in the coal mines during that period of time.

Mr. Harris:

We—

Mr. Burr:

Now, then, we offer to prove by him as a part of the offer of proof that during that entire period of time in the coal mines, from the time he began working when he was sixteen years old to the present time, the men have always had their wages computed, and have always had their wages paid on the working place to working place basis, and that the traveling time and no part of the traveling time has ever been paid as a part of the work day.

That the service men in the coal mines consist of those underground employees who do not engage in the production work in the working places; that during this entire period of time the service men have always been paid on an hourly basis of either ten, nine or eight hours per day, and that hourly basis being based upon the time spent at the usual working places of the service men, not including any part of the transportation or traveling time to and from the working places.

That so far as the production crews are concerned that the method of paying and computation of pay in some of these mines has been on the hourly basis just like the service men; that with some of them it has been on a tonnage basis, but that tonnage basis was fixed on the evaluation of each job and the tonnage rate based on that evaluation, and that these production men during

this entire period of time have always had their time computed and paid on the working place to working place basis and have never been paid or had any portion of the time going to and from their working places, either computed or paid.

We further offer to prove by this witness that during this period of time he sat in negotiations with the employees and the management, with the committees representing the United Mine Workers of America and affiliated with the C. I. O. organization at the present time,—not then affiliate, but now is,—and that during this entire period of time, in none of these negotiations, has any committeeman or union official or any individual employee of any of these companies ever claimed that they were entitled to be paid for any portion of this traveling time; that the custom has been universal, both by custom and by payment of wages, not to pay any portion of the traveling time to these employees.

We further offer to prove that within his knowledge, since he has been employed in these mines, that he knows that since the United Mine Workers of America has been engaged in representing the employees, or a majority of them, that they have, beginning as far back as 1903, within his recollection,—that they have negotiated contracts every two years with the various companies operating the mines, and that each and every one of these contracts contains the stipulation, in effect, that the working time should be computed on the face to face—on the usual working place to working place basis, being the same provision that is set forth in the contracts which were offered in evidence on yesterday, and to which Your Honor sustained objection, identified by Mr. Hassler; that the other companies had similar contracts with similar provisions in them over that period of time.

I believe that covers my offer of proof by him as to coal mines.

Mr. Harris:

We object to it on the whole, and each separate offer, separately and severally.

The Court:

Sustained.

Mr. Burr:

We except, separately and severally, as to the offer as a whole, and as to each separate and several paragraph in the offer, so the matter can be raised completely without any technicalities.

(By Mr. Burr):

Q. All right, sir. Now, I will take you into the ore mines. You have told the Court about the experience you have had in the ore mines, and I am confining these questions to the ore mines.

I will ask you to state to the Court whether or not in all the ore mines you have worked in and been familiar with during the time you have testified—

Mr. Harris:

May I interrupt?

Mr. Burr:

Yes, sir.

Mr. Harris:

He didn't work for any ore mines of any of these plaintiffs, did he?

Mr. Burr:

Yes, sir, he did. He worked for the Tennessee Company some, I think, and worked in the ore mines of the Woodward Company.

The Court:
Did you work for any ore mines except Woodward Iron Company?

The Witness:
No, sir.

The Court:
He said not.

Q. Just the Woodward Iron Company?
A. Yes, sir.

Mr. Harris:
And in line with our other objection, testimony as to what happened at Woodward Iron Company, which is not a party to the suit, and whose employees are not in the case, we object to all that, irrelevant, illegal and immaterial, and transactions between other parties, and throws no light on the issue in this case.

The Court:
The Woodward Iron Company operates in the Birmingham District?

The Witness:
Yes, sir.

The Court:
Overruled.

Mr. Harris:
May we have an objection to all testimony along that line?

Mr. Burr:
Yes, sir. You have got it already.

Mr. Harris:
I didn't know what year—

Mr. Burr:
You can have it, as far as I am concerned, for every year from the Civil War on down.

Mr. Harris:
All right.

Q. With reference to these Woodward Ore Mine operations while you worked there, I will ask you to state whether or not, Mr. Lacey the computation of the pay of the men was on a working place to working place basis, or was it on a portal to portal basis?

Mr. Quinn:
We object unless he qualifies him as to whether he knows or not.

Mr. Burr:
I am asking him what he knows in the mines—

The Court:
Overrule the objection.

A. It was from working place to working place. I know because I was superintendent and was in and out of the mines and very familiar with it.

Q. Was that the method and practice during the entire period you were acquainted with the conditions?

A. From the time I went to work there in 1903 until I quit there in 1923, that was the method of marking time, from working place to working place.

Q. During that period of time did you ever have any employee or ever hear of any employee or any committee of any union or any committee representing any

group of employees claim they should be paid for any portion of the time spent in traveling to and from the working place?

A. The question was never brought up.

Mr. Burr:

I think, Your Honor, we would be taking up unnecessary time of the Court if we asked him about the particular details, so we are content with that for the present.

The Court:

All right.

Mr. Burr:

If there is any matter on rebuttal, we can use him later.

The Court:

Is there any cross examination.

Cross Examination.

(By Mr. Harris):

Q. During this time that you say you were at Woodward from 1903 to 1923, did you say,—

A. Not continuously. I worked from 1903 about a year before I went to college, and then every summer I worked there, and then I went to work for Woodward in 1907 and worked there until 1913 in the engineering department, and then I came back in 1917 as superintendent of ore mines and stayed there until 1923.

Q. During that time you had the contract system and the men were paid on a tonnage basis, weren't they?

A. The miners were. We still worked a large number of company men.

Mr. Harris:

That is all.

The Court:
You are excused.

Mr. Harris:
Does Your Honor—is it about time for a recess?

The Court:
We will take a recess for a minute or two if you want to.

(Thereupon proceedings were in recess from 10:20 A. M. to 10:35 A. M., at which time proceedings were resumed as follows:)

The Court:
All right; proceed.

Mr. All:
Call Mr. Fies.

2103 MILTON H. FIES, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

(By Mr. All):
Q. Mr. Milton H. Fies?
A. That is right.
Q. You live in Birmingham, Mr. Fies?
A. Yes, sir.
Q. How long have you lived in Birmingham, Mr. Fies?
A. All my life.
Q. You were born in Birmingham?
A. Yes, sir.
Q. What is your age?

A. 58.

Q. What is your avocation, Mr. Fies?

A. I am vice president in charge of operations of the DeBardeleben Coal Corporation.

Q. What has been—What were you educated for? That is what I am getting at.

A. Mining engineering.

Q. Mining engineering?

A. Yes, sir.

Q. What school did you go to?

A. School of Mines, Columbia University.

Q. You received a degree there?

A. Engineer of Mines.

Q. Have you taken any other courses or received any other degrees?

A. I have an honorary degree from the University of Alabama,—Doctor of Science.

Q. Mr. Fies, have you had any connection with the American Institute of Mining and Metallurgical Engineers, or any other Institute of that sort?

A. I have been a member of the American Institute of Mining and Metallurgical Engineers since 1910 or '11.

Q. In your experience there have you served on any particular committees of that organization?

A. I am presently a member of four or five committees of the Institute,—the Committee on Industrial Preparedness, on Health and Safety in Mines, Promotion of Student Interest in Coal Mining, Saunders Mining Medal Award. I am not certain whether there are others or not.

Q. I will ask you if you are not vice president of the Southern Association for the Advancement of Science?

A. I am.

Q. Are you a member of the Alabama Academy of Science, Mr. Fies?

A. I am.

Q. Will you give us briefly your professional experience?

A. Why, first, from 1904—

Q. That is when you graduated?

A. That is right. —to 1908, I was engineer and superintendent of mines for the Republic Steel & Iron Company, which is now the Republic Steel Corporation. That was coal mines.

From 1908 to 1912 I was with the Birmingham Coal & Iron Company as general superintendent of coal mines. The properties of that company are now owned by the Woodward Iron Company.

And from 1912 to date, my entire connection has been with the DeBardeleben Coal Corporation.

Q. Has your experience been more peculiarly in ore mines or in coal mines?

A. Almost entirely in coal mines.

Q. Going first to the DeBardeleben Coal Corporation's operations how many—does that corporation operate any ore mines?

A. No, sir.

Q. How many coal mines does it operate, Mr. Fies?

Mr. Harris:

We object to any questions about how many coal mines the DeBardeleben Corporation operates, and where they are, and all about them.

The Court:

Sustained.

Mr. All:

Now, I offer to prove—

Mr. Burr:

Do I understand the Administrator Fleming is objecting too?

Mr. Brodie:
Yes, sir.

Mr. Burr:
I wanted to be certain.

Mr. Smith:
And we object too.

Mr. All:
Off the record. What mines—

Mr. Harris:
We object to all this off the record. I want the record to be the whole record. I am sure Mr. All knows the DeBardeleben Mines.

Mr. All:
No, I don't.

The Court:
All right; ask him off the record.

(Mr. All confers with the witness off the record.)

The Court:
As a matter of fact, Mr. All, we have ruled on the coal mining industry in this case, and I don't see the need of going into the operations of the coal mines.

Mr. All:
Now, I offer to prove that the DeBardeleben Coal Corporation is a commercial operator and is not operating captive mines.

The Court:
Make all your offer in one offer, and categorically make them, if you will.

Mr. All:

We offer to prove that Mr. Fies is now vice president in charge of operations of the DeBardeleben Coal Corporation—

The Court:

You have proven that once.

Mr. All:

—and that the DeBardeleben Coal Corporation operates three coal mines, Empire, Sipsey and Coal Valley; that those three mines are situated in Walker County, Alabama; that they are all underground mines and that they have a number of—substantial number of underground employees in each mine; that the travel distances in those mines—the average travel distance is approximately, for the production employees, the miners, two miles from the mouth of the mine; that that travel distance is covered by the miners by walking a part of the way, and by riding on trips a part of the way; that the customary method of carrying the tools, such as picks and other things they mine with, is by the company, and that it is optional with the men as to whether they carry their tools for their own convenience; and that sometimes the men carry the tools for their own convenience to the working places part of the way or all the way from the slope.

We offer to prove by him in his experience and observation that the hazards of underground coal mining to the coal miner is greater in coal mines than it is in ore mines.

Q. Now, Mr. Fies—

Mr. Harris:

Have you finished your offer?

Mr. All:

No, I have finished that part of it.

Mr. Harris:

Now, I do not object to the first few sentences where he offered to show he was Vice President of the DeBardeleben Corporation, but—

The Court:

That has already been shown.

Mr. Harris:

—I object to everything after that.

The Court:

Sustain the objection.

Mr. All:

I offer to prove further that the general method of mining, whether it be drift, shaft or slope, is the same method as employed in ore mining, being in both practices, essentially the driving of headings from the slope and rooms from the headings in the same way ore mining is done in Alabama.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

I offer to prove further by him that the trend—I offer to prove that these same conditions which have been outlined existed prior to October 24, 1938, for a number of years, and continually, prior to that time, for the time subsequent to 1908, and subsequent to October 24, 1938, up to the present time.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
We offer to prove that the tendency and trend is—that the travel distance in the mines is growing greater—

The Court:
You have already stated that.

Mr. All:
—in coal and ore mines; that the trend is towards greater distances in ore mines because the trend is towards fewer openings, and that results in the headings being driven at right angles to the slope in greater distances.

Mr. Harris:
He used the term ore mines by a slip of the tongue.

The Court:
No.

Mr. All:
I am making a comparison.

Mr. Harris:
Well, we object to the comparison.

The Court:
Sustained.

Mr. All:
All right, sir. I offer to prove by this witness that he is familiar with and has been familiar with—has been

in the mines of the Woodward Iron Company, one located at Mulga and the other at Dolomite, both in Jefferson County, Alabama, and that the average travel distance from the mouth of the mine to the working places or in the production places in those mines is four miles.

Mr. Harris:
We object.

The Court:
Is that coal mines?

Mr. All:
That is coal mines.

The Court:
Sustained.

Mr. All:
We except.
And that the method of mining in those mines is the same as it is in the ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
I offer to prove by this witness that he is familiar with the mining operations of the Roden Coal Company at Marvel, Alabama,—

Mr. Harris:
We object.

Mr. All:

—and that the average distance underground for the miners working underground in that mine is approximately two miles,—a mile and a half or two miles.

Mr. Harris:

We object.

The Court:

Sustain the objection.

Mr. All:

And that the method of mining there is the same as in the other coal mines, as to which I have offered to make proof.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

Off the record.

(Here followed an off the record discussion.)

Mr. All:

I offer to prove that he is familiar with the operations of the Republic Steel Corporation's mines at Warner and Sayreton, and that the travel distance in those mines is substantial, and, particularly, that the Sayreton mine is an old mine and the travel distance is two or three miles or more.

Mr. Harris:

We object.

Mr. All:

That the mining operations are underground, and that their mining operations are similar to the other mining operations with which he is connected, and similar to the ore mining operations.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

Off the record.

(Here followed an off the record discussion.)

Mr. All:

I offer to prove he is familiar with other coal mining operations in Walker County, and with Boothton, in Shelby County, and Edgewater and Docena mines of the Tennessee Company,—

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

And that the travel distance the underground miners have to go to their working places is very substantial, running several miles in distance, and that they travel to their working places partially on cars operated for the men and partially walk, and that the cover over—the over burden is substantial in all these mines with which he is familiar.

Mr. Harris:
We object to that.

The Court:
Sustained.

(By Mr. All):
Q. Now, Mr. Fies, what have you had to do, if anything, with the negotiation of coal contracts—

Mr. Harris:
We object.

Q. —within the last—say, since 1934,—beginning with 1934?

The Court:
Sustained.

Mr. All:
I offer to prove that he, for a number of those years has been—some of those years has been on the negotiating committees that represented the commercial coal operators in making contracts for the United Mine Workers of America, acting on behalf of the miners.

Mr. Harris:
We object.

The Court:
Sustain the objection.

Mr. All:
And that in all those contracts—in all those contracts this substantial provision has been incorporated:

"A seven hour day and five day week,—thirty-five hours per week,—shall prevail, exclusive of a 30 minute lunch period, with option to run through without suspension if agreed between the operator and the mine committee.

"The seven hour day means seven hours of work in and about the mines in the usual working places for all classes of labor,—other than those accepted by this contract,—exclusive of the lunch period, whether they be paid by the day or by the tonnage or piece work basis, except in case of accident which temporarily necessitates longer hours on the part of the employees than those required."

Mr. Harris:
We object.

Mr. All:
That is in each of those contracts.

The Court:
Are you offering to prove that?

Mr. All:
Yes, sir. Now,—

The Court:
I didn't understand, Mr. All.

Mr. All:
I want to offer this contract as typical of the coal contracts which have been negotiated by the committees of the Alabama coal operators with the United Mine Workers of America.

Mr. Quinn:
For how long?

Mr. All:
Since 1934.

Mr. Harris:
We object.

The Court:
Sustained.

(By Mr. All):
Q. What was the work day prior to that time?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
We offer to prove it was eight hours.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. All:
Note these contracts were negotiated by a committee on behalf of the coal operators, but when the contract is negotiated, an individual contract is signed.

Mr. Harris:
We object to that.

The Court:
Sustained.

(By Mr. All):

Q. Now, what connection have you had, Mr. Fies, with the United States Bureau of Mines, if any?

A. I have been a consulting engineer of the United States Bureau of Mines and a member of the Advisory Board, and am presently a member of the Advisory Board for the U. S. Bureau of Mines for its electro-technical laboratory at Norris, Tennessee, and its southern experiment station at the University of Alabama.

Mr. All:

I offer to prove by this witness he has been familiar with coal mining operations in Tennessee—

The Court:

Where?

Mr. All:

Tennessee and Kentucky,—

Mr. Harris:

We object.

Mr. All:

—and that the method of operating coal mines there is the same as in Alabama.

The Court:

Sustained.

Mr. All:

That the coal mines—that the substantial coal mines are underground coal mines, and the operation is the same, and the travel time is substantial, extending from three or four to four or five miles.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
And taken up partly in riding and partly in walking, and in Tennessee the work time is at the usual place of work as it is under the Alabama contracts.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
I want to introduce this instrument as typical of the Alabama commercial operators' contracts.

Mr. Harris:
And we object to it.

The Court:
Sustained.

Mr. All:
I believe I will take this course. I don't mean this explanation to be a part of the offer of proof. The permanent contracts that are negotiated are signed by the individual operators.

Mr. Harris:
We object to that.

Mr. All:

The individual contracts are signed by the operators themselves after being negotiated by the committee.

Mr. Harris:

I object.

The Court:

Sustained.

Mr. All:

We understand that each of these offers to prove is separate and several and we have a separate and several exception to the action of the Court in sustaining objections to it, both on behalf of all the plaintiffs and each of the plaintiffs, separately and severally, both as to all the defendants and each group of the defendants, separately and severally, including the intervener.

That is all.

Mr. Harris:

No questions.

(Witness excused.)

Mr. Burr:

I will take Mr. Ed Flynn next.

Mr. All:

I want to mark this exhibit for identification.

The Clerk:

It will be Number 38, Sloss.

(Thereupon the specimen contract of Alabama commercial coal operators with the United Mine Workers of America was marked for identification Sloss Exhibit No. 38.)

2115 ED FLYNN, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Flynn, where do you live, please, sir?

A. I live at Pinson, Alabama.

Q. What business are you engaged in at the present time?

A. Well, at the present time I am working for the United States Department of Labor, Bureau of Labor Standards.

Mr. Harris:

I didn't hear you.

Q. Start over again.

A. I am working for the United States Department of Labor, Bureau of Labor Standards, as special agent for the Committee for the Conservation of Man Power in Defense Industries,—a dollar a year.

Q. Is that in reference to safety work or not?

A. That is safety work, safety, health and sanitation.

Q. How old are you, Mr. Flynn?

A. I was 67 on the 2nd day of April, 1941.

Q. I wish you would begin with your first experience in mining and tell me where it began and just go hurriedly through it.

A. My first experience in mining started at Tracy City, Tennessee.

Q. In what year, do you recall?

A. In the fall of 1884.

Q. And how long did you stay up there?

A. I stayed there until 1892.

Q. Now, were you engaged—what kind of mining up there?

A. Coal mining.
Q. Coal mining?
A. Yes, sir.
Q. Were they underground mines or not?
A. Underground mines.

Mr. Harris:
We object; it is immaterial whether they were underground mines in Tennessee or not.

The Court:
Sustained.

Mr. Burr:
We offer to prove that his experience in coal mining in Tennessee was in underground coal mines.

Mr. Harris:
We object.

Mr. Burr:
And we offer to show the length, distance and things of that sort.
I will wait and take that later and group it all together and make it shorter.

Mr. Harris:
We object.

The Court:
Sustained.

Q. After leaving the coal mines in Tennessee, where did you go next?
A. In September, 1892, I went to Thurker, Texas.

The Court:
Where?

The Witness:
Thurker, Texas.

Q. Who did you work for out there?
A. For the Texas and Pacific Coal Company.
Q. What sort of mines?

Mr. Harris:
We object; it is immaterial what sort of mines he worked in in Texas.

Mr. Burr:
The Court has been allowing me to show that on his experience.

The Court:
I will permit it.

Q. Were they ore mines or coal mines?
A. Coal mines.
Q. Where did you next work?
A. In December, 1892, I went to Alderson, Indian Territory, Oklahoma now, and worked there until September 1893.
Q. For what company?
A. Choctaw Coal & Railway Company.
Q. Were they ore mines or coal mines?
A. Coal mines.
Q. Where did you go from Oklahoma?
A. From Oklahoma I came to Pratt City, Alabama, December, 1893, to March, 1894, I worked at Wylam Mine of the Tennessee Coal, Iron & Railroad Company.
Q. That was a coal mine also?

A. Yes, sir.

Q. In March, 1894, when you left the Tennessee Company, where did you go?

A. I went back to Tennessee, Tracy City.

Q. How long did you stay there?

A. Until March, 1895.

Q. Did you work in the coal mines in Tennessee at that time?

A. Yes, sir.

Q. From there where did you go?

A. I came back to Pratt City in March, 1895.

Q. To what company?

A. Tennessee Coal, Iron & Railroad Company.

Q. And at what place in Pratt City?

A. Well, I worked two days on Red Mountain in the ore mines in '95, and then I went back to Pratt City and worked in the railroad shop from May to September, 1895, and then I went to Number 7 Pratt Mine as a miner.

Q. And you continued to work in the mines of the Tennessee Company for how long?

A. I worked in Number 7 until 1898, and then I worked at Number 5 slope, Wylam mine, until December, 1900.

Q. All right, sir. Did you become at any time—during this period of time were you at any time an officer of the United Mine Workers of America?

A. In December, 1900, I was elected President of District 20 of the United Mine Workers of America and held that position until February, 1907.

Q. Then what happened—

Mr. Harris:

We object.

Q. What did you do in February, 1907, work, I am asking about?

A. In February, 1907, I resigned and accepted a position as assistant mine inspector of the State of Alabama.

Q. Under what Governor did you hold that position?

A. Governor B. B. Comer.

Q. How long did you hold that position?

A. I held that position for two years and was then appointed chief mine inspector under Governor Comer, and held that position until March 31, 1910, when I resigned to accept a position as chief mine inspector for the Tennessee Coal, Iron & Railroad Company.

Q. How long did you hold that position?

A. 29 years and one month.

Q. You retired when?

A. May 1, 1939.

Q. And then you retired on pension?

A. Yes, sir.

Q. Now, with the exception of that two or those—I believe you said two days you were in the ore mine,—I will leave that out, I think it is too short a time to be considered,—has your actual work been in connection with coal mines as a miner?

A. Except the five months I worked in the railroad shops.

Q. Did you at one time—in addition to the work you have told about, did you have an occasion to make a general inspection of the ore mines of Pennsylvania and to make a report on that inspection?

Mr. Harris:

We object.

Mr. Burr:

Showing his experience as a miner. I am not going to ask what the report was he made.

Mr. Harris:

He has shown an experience of forty or fifty years.

Mr. Burr:

Yes, sir, and I have a right to show how detailed it was so this matter may be considered by any Court it gets to. I am going very rapidly and taking up but very little time.

The Court:

You asked him—

Mr. Burr:

I asked him if he made an inspection of the A. C. Fricke Coal Company mines in Pennsylvania.

The Court:

Is that coal mines?

Mr. Burr:

Yes, sir.

Mr. Harris:

We object.

The Court:

Sustain the objection.

Mr. Burr:

We offer to show in 1910 he was employed to make and did make an inspection of all the A. C. Fricke Coal Company mines in Pennsylvania.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

We offer to show he made inspections while employed by the Tennessee Coal, Iron & Railroad Company for the Woodward Company—

Mr. Harris:

We object.—

Mr. Burr:

I hadn't finished. Read what I said last.

(Thereupon the reporter read the last offer made by Mr. Burr as above recorded.)

Mr. Burr:

Cut it out, and I will start over.

We offer to prove that while working for the Tennessee Coal, Iron & Railroad Company as chief mine inspector he made inspections for that company and went into the underground coal mines in Illinois and in West Virginia.

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

And we offer to prove that he made two inspections for the Woodward Iron Company during the period of time I have been asking him about in the mines of Pennsylvania,—coal mines of Pennsylvania.

Mr. Harris:

We object to that.

The Court:
Sustained.

Mr. Burr:
Now, if Your Honor will allow me,—I think it will save time,—I will just read the offer of proof and offer it separately and severally.

The Court:
When you get through, indicate.

Mr. Burr:
When I quit reading, I am through.

The Court:
All right.

Mr. Burr:
During my entire experience with the coal mining industry, the computation of a miner's time started when he reached his working place and ended when he left his working place,—in other words, the face to face or working place to working place basis. The time spent by a miner in going to and from his working place was on his own time. This is true of the mines I worked in in Alabama, and is also true of the mines I inspected in Pennsylvania and West Virginia.

We offer to prove by Mr. Flynn that the United Mine Workers organized in Alabama in the year 1898 and in that year succeeded in organizing all of the mines in Alabama substantially 100 percent; that it had a State organization, and beginning in 1898 it began to make contracts with the coal mining operators in Alabama, including the captive coal mines operated by Sloss, Woodward, Tennessee and Republic, and including the commercial coal mines throughout the Alabama district.

That these contracts were negotiated, beginning in 1898, in joint convention of the Alabama coal operators and the representatives and delegates of the United Mine Workers of America, and that near the end of each contract another convention was had annually and a new contract negotiated; that these contracts were thus negotiated year by year beginning in 1898 until the joint scale convention was held in the year 1903.

That all the contracts contained a—had a provision in the contract which read as follows, the provision varying only so as to read eight days where the eight-hour day was in force and to read ten days when the ten-hour,—wage for a ten hour day.

Mr. Harris:

You said ten days.

Mr. Burr:

Ten hours.

The provision reads as follows:

"That an eight hour day means eight hours work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

"Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named."

We offer to prove that the contract contained that provision for each of those years when the contracts were negotiated.

Now, we offer to prove that in 1903 that at the joint scale convention of the United Mine Workers of America and the Alabama Coal Operators held in the City of Birmingham, that Mr. Flynn was elected and served as the chairman of that joint convention, that they were not able to—that the convention resulted in an inability to agree on a contract, the inability to agree being—

The Court:
Mr. Burr, I think that is going far afield.

Mr. Burr:
Your Honor, I have got a right to make an offer of proof.

The Court:
I know, but I don't think you ought to take up the time of the Court—

Mr. Burr:
I can't make it any quicker.

The Court:
I am going to limit you.

Mr. Burr:
I am making it as fast as I can.

The Court:
The idea of not being able to agree on a contract is certainly—

Mr. Burr:
Sir?

The Court:
Go ahead.

Mr. Burr:

I am showing why they were not able to agree, and the matter of not being able to agree was submitted to an arbitration board.

The Court:

All right; go ahead.

Mr. Burr:

That arbitration was held in the City of Birmingham and Mr. Flynn and Mr. Beddow, an attorney, and others represented the miners, and Mr. Walker Percy and Mr. Cabanias and others represented the operators; that the Board of arbitration consisted of Honorable George Gray of New Jersey as the agreed upon umpire or chairman of the board, and members of the operators and the union; that the arbitration board presented a contract in which they granted some of the demands of the union, and refused some, and the contract was executed pursuant to the award of arbitration, and the contract was on the face to face basis,—that was in 1904,—by the award of the arbitrators.

Now, we offer to prove that since that time, as long as Mr. Flynn was connected either with the Union or any of the companies he has offered to testify about, that all contracts have been on the same basis of working place to working place, without any exceptions.

We offer to prove by him also that he is familiar with the contracts entered into between the United Mine Workers of America and the coal operators in the other districts, including the districts of Indiana, Illinois, Ohio and Pennsylvania, and what is known as the Appalachian Region, and we offer in that connection to prove that the contract made by that general joint conference of the coal miners and operators of Illinois, Indiana, Ohio and Pennsylvania resulted in the making of a contract con-

taining the same provisions that I read just now, similar to the one contained in the Alabama contract.

We offer to show by Mr. Flynn that, in the proceedings before the Board of Arbitration, known as the Gray Arbitration Board, that it was expressly admitted by the miners, and we offer the stenographic report of that proceeding, that the miners admitted that the time spent in travel was not to be computed in their day's pay.

The exact—Just a minute, Your Honor; I think I am almost through.

Well, we will offer to prove, Your Honor, and I will supply the exact language later, the exact language of the agreement on the part of the two parties as stated in the convention.

I will supply that to the record later so as not to lose any time.

Now, we further offer to prove that the first union contract of the kind I have mentioned was made in 1898, and they continued to be made each year with similar provisions from 1898 to 1904, and continued until 1908, at which time there was a strike and the union lost the strike, and that then there were no contracts made until about 1921 at which time or about which time the union succeeded in again reorganizing and began making contracts again with the coal operators, and made the contract—the first new contract after the period of time when they were not organized was known as the Beltona contract, and was made in 1921, and which is identified as Plaintiffs' General Exhibit—whatever the next number is.

The Clerk:
Plaintiffs' General Number 33.

Mr. Burr:
Yes, sir.

The Clerk:
That is for identification only at this time?

Mr. Burr:
That is right. I understand I am just making the offer of proof.

The Court:
Plaintiffs' 33.

The Clerk:
33.

Mr. Burr:
Yes, sir.

(Thereupon the Beltona contract was marked for identification Plaintiffs' Exhibit No. 33.)

Mr. Burr:
This contract contained the following provision:

"The eight hour day will be in effect, which means eight hours actual work at the usual working places. The time required going from and to the usual working places shall not be considered a part of the day. The starting time shall be not later than seven A. M., and not more than thirty minutes for lunch."

That that contract was the first new contract executed after the reorganization of the union, and was executed by a number of the coal operators, and that subsequent to that the later contracts were made, and all of them contained the same provision found in the contracts identified by Mr. Hassler on yesterday.

Now, we offer to prove by Mr. Flynn that during the entire time that he has been connected with coal mines,

and up until the time he left the employment of the Tennessee Company as an active mine official, that computation of pay and pay was always made on the working place to working place basis, and that no traveling time to and from the working place was ever paid for or ever asked for any any union or any committees or by any employees within his knowledge; that there never was any question raised about it.

As an illustration, we offer to prove that, taking the driver, one of the service crews, for instance, when he reached the side track at the point where he got his cars to deliver, that was his working place and his day's work started at that time, even though he had previously gone to the stable and harnessed his mule and brought him to the side track at the point where he got his cars to deliver, and that, taking the producing miners, their working place was when they got to their room or the place of work where they performed duties in producing the coal.

We also offer to prove by him that during this period of time the miners,—that is, up until the last few years,—carried their tools from the top; that in some of the mines,—most of them,—the miners entered the mine at the portal and deposited their checks and took their checks out when they came out of the mines; that there were no bath houses in those days and the men changed anywhere they found it convenient to change.

The Court:

You want to show that?

Mr. Burr:

Yes, sir.

That the transportation in and to the coal mines and the walking to and from the working place was—either they were transported—walked all the way from the surface to the working places, or they were transported

part of the way and walked part of the way, and vice versa.

We also offer to prove that as mine inspector he inspected and was required to inspect all the coal mines in the State, and to make reports on them, and the ones he didn't inspect himself he had reports on from his associate inspectors.

We offer to show that from 1890 to 1904 the length of the slopes in the different coal mines in Alabama varied; that at the time Number 5 slope of the Tennessee Company was about one and one-half miles from the top, and that the men, on their time, going to and from their work, walked both ways; that the time consumed in going to and from the working places was not insisted on by the union in the period of his connection with it, because of the fact that in some plants a man might live some miles from the plant, but his day's work did not start until he actually went to work; that the service to the company did not start until you reached your place of work, and it did not make any difference whether you traveled underground or overground, your traveling was going to your place of work; that if one mine, as many of them were, was four or five miles underground and the coal miner would have to consume two hours to go to and from his work, and another mine would be a much shorter distance, the latter mine would have its employees at their working places ahead of the other, and would, therefore, get much more productive work in the mine having the shorter transportation than in the mine where the miner had to travel from two to five miles.

We further offer to prove that during the period of time that I have asked him about up to and including October 24, 1938, that in all the mines he worked in and inspected, including separately the various coal mines in Alabama, those in Tennessee, those in Texas, those in Oklahoma, those in Pennsylvania, and West Virginia

and other parts of the Appalachian field, that it has always always been the universal custom to pay the miner and for the miner to accept pay on the working place to working place plan, and that never during his experience with coal mines he has never had any experience that any pay has ever been made for transportation time or for traveling time to and from the working place.

I think that covers the offer of proof.

Mr. Harris:

We object.

The Court:

Objection sustained.

Mr. Smith:

Your Honor, that will apply to all three, the defendants and intervener?

The Court:

Applies to each defendant and the intervener.

Mr. Burr:

Of course, in making the offer, in order to shorten it, I have probably sometimes put in conclusions, but I am offering to prove the facts which follow those conclusions, that is, the details as to each mine, develop the facts that the conclusion follows from.

Mr. Harris:

We object, whether stated as a fact or conclusion.

The Court:

I sustain the objection.

Mr. Burr:

And in reference to the contracts, we offer to prove—and I can save some time,—the offer will be made by Mr. Flynn in connection with some of them and by other witnesses in connection with others, but we offer each contract that contains a provision so there will not be any question of the contract itself.

Mr. Harris:

We object to each contract.

The Court:

Sustained.

Mr. Burr:

And our offer is made separately and severally on behalf of each of the plaintiffs, and it is made separately and severally as to each part of the offer, and we take, separately and severally, an exception as to the offer as a whole, and each part as to each defendant and each class of defendants, including the interveners.

I believe that covers it.

That is all, Mr. Flynn.

The Court:

You are excused, Mr. Flynn.

(Witness excused.)

Mr. Burr:

All right, sir. We want to take Mr. McHugh next.

2130 J. M. McHUGH, being called as a witness, and being duly sworn, testified as follows;

Direct Examination.

The Court:
J. M. McHugh?

Mr. Burr:
Yes, sir.

(By Mr. Burr):
Q. Mr. McHugh, what is your—how old are you, please, sir, now? How old are you now?
A. I am in my 76 year.
Q. Are you engaged in active work at the present time, or are you retired?
A. Well, I am retired, but interested in a little mining proposition.
Q. You are operating a little coal mine, are you?
A. Yes, sir.
Q. Where is that mine located, Mr. McHugh?
A. Pratt City.
Q. Sir?
A. Pratt City.
Q. Pratt City?
A. Yes, sir.

Mr. Burr:
I believe, if Your Honor pleases, I would save time if you would just let me read them, and then when we get to a point where you want to object, you can object. I have got his statement written out.

The Court:
When will he know when to object?

Mr. Burr:

I thought maybe he wouldn't object to his history or his mining experience. I will let you know when I get in the coal mining business.

The Court:

All right.

Mr. Burr:

I am in my 76th year, and am engaged in the coal business at the present time in Pratt City, Jefferson County, Alabama, under the name and style of the Colonial Coal and Coke Company. I have been actively connected with the coal mining business since I was 14 years old.

I came to the Birmingham district and entered the employment of the Tennessee Coal, Iron & Railroad Company as superintendent of its coal mines on August 1, 1905, and served as superintendent until March 1, 1919, at which time I was promoted and became general superintendent of all of the coal mines of the company of this district. I continued to serve as general superintendent until March 1, 1936, at which time I retired.

Previous to my connection with the company I had worked for various companies in Pennsylvania, Missouri and Iowa in various capacities. My first work was as trapper when I was fourteen years old. Among other occupations that I have had in coal mining are dragman, driver, miner, machinist, electrical and mechanical engineer, and superintendent. My last employer before coming to the Birmingham district, was the United Coal Company at Elizabeth, Pennsylvania, where I was employed as a mechanical and electrical engineer.

Now, that is the historical part about it. Do you want to object to that or not?

Mr. Harris:

I understand that is merely qualifying the witness as to his experience, and Your Honor has ruled it is admissible.

The Court:

Really it is not, but I have been admitting it all along.

Mr. Burr:

Yes, sir.

Mr. Harris:

The rest of it is an offer to prove?

Mr. Burr:

The rest of it is an offer to prove, and I will read that.

The Court:

Yes, sir.

Mr. Burr:

The first contract which was made by the company with any labor organization was made between the company and John L. Lewis, Phillip Murray, Thomas Kennedy, William Mitch and other representatives of the United Mine Workers of America on the second day of May, 1934. The only provision in this contract relating to questions here under consideration reads as follows:

"Seven hours of labor shall constitute a day's work. The seven hour day means seven hours of work in the mines at the usual working places for all classes of labor," and so forth. It is not necessary to read it.

Subsequently contracts were made with the same union on the 25th day of November, 1935, and the 17th day

of January, 1936, the last contract remaining in effect until April 1, 1937. That is the last contract I had knowledge of and participated in the making of.

The only question appearing in these contracts relating to the question here under consideration reads as follows, and then it is the same definition of the seven hour day.

Contemporaneously with the execution of the contracts referred to above, contracts containing similar terms and provisions were executed between the company and representatives of the Brotherhood of Mine Workers of Captive Mines.

The contracts above referred to were all made during my service as general superintendent of coal mines.

Now, we make formal offer to offer each one of those contracts, separately, and each of them contains the provisions I have just read.

Mr. Harris:

And we object to each one of them, separately and severally.

The Court:

Sustained as to each one.

Mr. Burr:

I understand—No, needn't read that.

Since my connection with the company, it has been the universal custom and practice to compute the hours worked for which the men are paid as the time actually spent by them at the face, or at the usual working place of the men.

I took part in the negotiation of these contracts with the union. No question has ever been raised in any of these negotiations by any of the employees or by representatives of any of the employees or representatives of the union contrary to this general custom and practice.

The men have always been paid and have always accepted pay on the basis of time spent at the working place without any pay or consideration for the time spent by them in going to and from the portal of the mine to their working places.

During all this period of time I have been thoroughly familiar with and have known the custom and practice which has been in effect in the coal mines concerning the use of the words "working place" and "hours of work", and it has always been the custom and practice in the coal mines of the Birmingham district that hours of work were intended to and did refer to hours worked by the miners at the face, and other employees at their usual working places.

Now, we offer to show the details in reference to the depth of the slopes, the character of slopes, method and kind of transportation, the check system of entering the mines, the fact that in the coal mines the coal miners carried a portion of their tools from the surface to the working places and from the underground unloading station to the working places; the physical condition of the slope and of the walkways and the ventilation in the same general way that we offered more specifically while Mr. Hassler was on the stand.

I think that will save going into all that. I think that covers it. That completes the offer for Mr. McHugh.

Mr. Harris:

We object to it, if the Court please.

The Court:

Sustained.

Mr. Burr:

And we make the same statement in reference to the way the offer is made and the way the exception is taken

as on the last witness, Mr. Flynn, so as not to repeat it, but just have the understanding it is done the same way.

Mr. Harris:
That is agreeable with us.

Mr. Burr:
All right, sir.

Q. I don't know—Mr. McHugh, have you got any knowledge of the custom of the ore mines of the company, or is yours confined to the coal mines?
A. The coal mines.
Q. The coal mines?
A. Yes, sir.

Mr. Burr:
I don't want to ask him anything about the ore mines, then.

The Court:
You are excusing him?

Mr. Burr:
Yes, sir.

The Court:
You are excused, Mr. McHugh.

(Witness excused.)

Further offer of proof by Ed Flynn.

Mr. Burr:
Now may I go back a little into the record and state in the record what I wanted to offer in connection with Mr. Flynn's testimony that I could not find?

The Court:
Yes, sir.

Mr. Burr:
It is short.

The Court:
Yes, sir.

Mr. Burr:
As to the statement of the union as to the matter, this statement was made:

"The day is reckoned from the time the miner commences work in the morning at seven or a quarter past seven, until half past four. The time is started from the time the driver hitches to the car until he unhitches from the car and from the time the miner gets to the face of the coal until he leaves the face of the coal.

"Question: And where it applies to the miner, it is from the time he gets to the face of the coal until he leaves the face of the coal?

"Answer: Yes, sir, that is where they count it.

"Question: Where the eight hour day is in force, it counts from the time the men actually get to their working place in the mine until they leave it?

"Answer: Yes, sir.

"Question: While walking in there you are not on company time?

"Answer: No, sir."

I think that is enough to illustrate the point.

Mr. Harris:
We object to that also.

The Court:
Sustained.

Mr. Burr:
I offer—further we offer for Mr. Flynn also to show—I didn't show that—that he has worked in the coal mines at every occupation from driver on up to the place he went to, every kind of occupation.
All right, sir. Now, we—

Mr. Harris:
Now, on that, in proving his experience,—he has proven a number of years he worked in different mines, and merely to show the kind of work he did would probably be consistent with Your Honor's ruling,—I mean to qualify him.

Mr. Burr:
That has been—

Mr. Harris:
I don't know why—

Mr. Burr:
It has been proven before.

The Court:
Admit that.

Mr. Burr:
In other words, he has worked in every occupation from a driver and trapper—

Mr. Harris:
What I mean, I don't want my objection sustained—

Mr. Burr:

Yes, sir. I will take Mr. Kirk next. It will not take but a few minutes.

2137 R. E. KIRK, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:

What are your initials, Mr. Kirk?

The Witness:

R. E.

(By Mr. Burr):

Q. Mr. Kirk, what is your present position with the Tennessee Company, please, sir?

A. General superintendent of coal mines.

Q. When did you become general superintendent of coal mines?

A. May 1, 1936.

Q. Whom did you succeed in that capacity?

A. Mr. Flynn was acting in the interim after Mr. McHugh retired.

Q. Ed Flynn?

A. Yes, sir.

Q. Now, have you continued to be general superintendent of the coal mines for the Tennessee Company since that time to the present time?

A. Since that time to the present time.

Q. How old are you, please, sir?

A. Fifty-one.

Q. Are you a graduate of any colleges with any degrees?

A. Penn State College.

Q. What degree, please, sir?

A. Bachelor of Science in Mining Engineering.

Q. Would you mind giving me rapidly and not in detail your business experience after leaving college and previous to your employment by the Tennessee Company, where you worked and who you worked for?

A. After leaving college I was first employed as time keeper by the Dravo Construction Company in Pittsburgh, and then as transitman by the Bessemer Coke Company, and then as superintendent of the Lusane Coal and Coke Company, and then as division superintendent of the H. C. Fricke Coal Company.

Then I enlisted in the army and was discharged as Captain of the Fiftieth Infantry, and became assistant superintendent of the Fricke Company in 1919 and continued to 1930, when I became superintendent of the Mahanoy Division of the Philadelphia and Reading Coal and Iron Company, where I remained until 1936 when I came to the Tennessee Company.

Q. Now, did those companies operate coal mines or ore mines or both?

A. Coal mines.

Q. Was your connection with all these companies in connection with their coal mines?

A. Yes, sir.

Q. Since being with the Tennessee Company, have you had any connection with the ore mines or not?

A. Only superficially.

Q. Superficially?

A. Yes, sir.

Q. Your real work had been in charge of the coal mines?

A. Yes, sir.

Mr. Burr:

Now, we offer to prove by Mr. Kirk the following: I am assuming this is the quickest way to get at it again.

We offer to prove by Mr. Kirk that when he became general superintendent of the coal mines the working conditions of the employees in the coal mines of the company were under the contract with the union that Mr. McHugh identified; that the last contract Mr. McHugh made was in effect when he got here, containing the provision of the face to face definition.

The Court:
Proved by Mr. McHugh?

Mr. Burr:
Yes, sir.

The Court:
You didn't identify it but you offered it.

Mr. Burr:
Yes, sir.

Now, I offer by him that since that time that Mr. Kirk has had, along with the other officials of the company, the duty of negotiating contracts with the United Mine Workers of America, and that there have been negotiated with that union, under his administration, and also with the Brotherhood, which is the union affiliated with the American Federation of Labor, agreements which —a contract which expired, the first one under his supervision, expired on the first day of April, 1937, and on the 7th days of May and June, 1937, respectively, the company and representatives of the United Mine Workers of America and of the Brotherhood extended the agreement which expired on the first day of April, 1937, in all its terms and conditions, until April 1, 1939, and on May 19, 1939, this contract with the United Mine Workers of America was continued, by written agreement, until April 1, 1941, and a written contract has recently been made which expires on April 1, 1943.

The Witness:
That is right.

Mr. Burr:
And we offer all those contracts, and all of them contain the provisions that I have referred to.

Mr. Harris:
We object to each one of them, if the Court please.

The Court:
The objection to each one is sustained.

Mr. Burr:
Now, do you gentlemen make similar objections to your contracts?

Mr. Smith:
Yes, sir. I thought it was understood.

The Court:
Sustained.

Mr. Burr:
I just wanted to be certain. I am offering both sets of contracts.

The Court:
Sustained as to those gentlemen and the intervener also.

Mr. Burr:
We offer to prove by Mr. Kirk that he was present and took part in all the negotiations with the representatives of both these unions at the various meetings where these contracts were under consideration, and also where any complaints or suggestions or requests by any

of these unions were under discussion at the meetings which were held at regular intervals and at leave once a month during this period of time, and that at none of these meetings, nor during none of those negotiations has any representative of any union or any employee of the company or any committee representing any employees ever suggested or requested or claimed that the work day should include any part of the traveling time; that on the contrary their position was exactly the opposite, that it should not include the traveling time.

We offer to prove by him during the period of time he has been connected with the company that the computation and payment of wages has been on the face to face or working place to working place basis and that there has never been any computation or payment of traveling time.

We further offer to prove by Mr. Kirk that he has, in his business as general superintendent of mines for the Tennessee Company, had occasion to go in the mines of coal mining companies throughout the Alabama District, and that the same conditions that exist in the Tennessee Company's mines exist there.

That in all the mines that he worked at previous to coming to Alabama, as covered by him in his general statement and testimony, the same conditions always existed in each and all those mines, and that in no mine he has ever worked in has the contention been made that traveling time should be considered as a part of the day's work.

We also offer to prove by him, and in that connection ask that this map be identified—

The Clerk:

It will be Plaintiff's General Exhibit Number 34 for identification.

Mr. Burr:

That is all right.

(Thereupon a map of the Hamilton Mines of the Tennessee Coal, Iron & Railroad Company was marked for identification Plaintiffs' Exhibit No. 34.)

Mr. Burr:

We offer to prove by Mr. Kirk that he is familiar with Plaintiffs' Exhibit 34, which is a map of the Hamilton Mines of the Tennessee Company, and that it is a correct map of the Hamilton Mines, and shows the working places in the mines and shows the slope and the distances, and we offer to show that the distance of the slope—the length of the slope on October 24, 1938, was in excess of 10,000 feet, and that since that time it has been extended approximately 2,000 feet.

We offer to show at that time, on October 24, 1938, the furtherest working place from the bottom of the slope was approximately two miles, and that since that time the furtherest working place—the mine has been so extended that the furtherest working place is now approximately two miles and a half.

And we offer to show the details of this map, showing the number of working places, the length of the slope, the distance the men have to travel, the distance they ride and the distance they walk, and we offer to show the other coal mines of the company are substantially similar to those shown here,—sometimes varying as to distances,—and that the operations are the same, and that in all the coal mines in which he has had experience, and specifically the Tennessee Company mines, the Hamilton, Docena, Edgewater and Wylam mines, it has been the practice in all those mines during this period of time for the men to deposit their checks at the portal after being at the bath house, and we offer to prove the method of transportation, character of it and extent of it from there to the working places, and the way the tools are handled, and explosives, and all other things, and the

condition of the mines with reference to the roofs, the height of the roofs, both on the main slopes, in the headings and rooms, and to prove that in all instances the distances in coal mines are greater than in the ore mines, as shown by the map we offer to have him look at in order to make that proof, and we offer to prove that during this period the custom and practice of the coal miners has been to carry their tools to and from their working places as far as light tools are concerned, some of them being carried from the surface and others delivered to the working places by the service crews.

We offer to prove where the service crews go to their working places, where their work starts and stops, and the same thing as to the production crews and prove it is similar to the ore mines.

We offer to prove that ventilation in the coal mines is more necessary in the coal mines than in the ore mines on account of the gas existing in the coal mines and not in the ore mines, and that the air and ventilation is better in the ore mines than in the coal mines; that the working conditions, both in traveling and working, are more comfortable and safer in the ore mines than in the coal mines, and we offer to prove the details of that by proper evidence to support that conclusion. For instance, in the coal mines they have to stoop. We offer the details to support the conclusion. I believe that covers it, Your Honor.

Mr. Harris:

We object to that, to the map and the offer.

The Court:

The objection is sustained.

Mr. Burr:

And we have the same character of exception as stated in connection with Mr. Flynn.

The Court:
That covers all defendants, and the intervener,—the objection does.

Mr. Brodie:
As I understand, all objections inure to all defendants and the intervener.

The Court:
Yes, sir.

Mr. Burr:
Off the record.

(Here followed an off the record discussion.)

Mr. Burr:
It is stipulated by counsel that substantially the same offer of proof shall be made—

The Court:
May be made, not should.

Mr. Burr:
Is made—

The Court:
Is made.

Mr. Burr:
Yes, sir.

The Court:
All right.

Mr. Burr:

—by Ben F. Roden, Ed Rowe, Carr McCormack, Gene Morgan, and George Peters,—I have got him available,—George Peters,—and all of whom are on call as witnesses, and we make the same offer substantially as shown by the testimony of Mr. Milton Fies.

Mr. Brodie:

Offer of Mr. Milton Fies.

Mr. Burr:

The offer of Mr. Milton Fies, the commercial operator who testified, with the right, at our convenience and the Court's convenience, to put that in writing, giving their experience, with the understanding when it is put in writing we give these gentlemen a copy, and they can indicate if there is anything in there they want to withdraw their objection to, and if so, they may do so.

Mr. Harris:

With the exception of the qualification?

Mr. Burr:

Yes, sir.

Mr. Harris:

That is agreeable.

Mr. All:

And with the understanding we want to ask the witnesses questions to develop the facts we want to prove.

Mr. Harris:

We are not limiting our objection; we are not limiting it as to whether it was a conclusion, but if I understood Mr. Burr a while ago, he was offering to state the facts on which the conclusion was based or laid.

Mr. Burr:
That is right.

The Court:
That is right.

Mr. Burr:
And in any event, they were objecting to the facts and the reasons.

The Court:
All right.

Mr. All:
On account of Sloss being a party to the suit, I wish to use Mr. Costner.

2146 T. E. COSTNER, being recalled as a witness, and having been previously sworn, testified further as follows:

Direct Examination.

(By Mr. All):
Q. Mr. Costner,—This is Mr. T. E. Costner, who has heretofore been sworn and has already testified with respect to ore mines?

The Court:
Yes, sir, he has been on the stand. He has testified with reference to ore mines.

Q. What experience have you had with coal mines, Mr. Costner?
A. I have been working in them in various capacities since 1915, mostly in an engineering way, until 1928,

at which time I was superintendent of one of the large coal mines in the district; from 1930 to 1935 I was superintendent of the Lewisburg mine; from 1935 I have been general superintendent of both ore mines and coal mines of Sloss-Sheffield Steel & Iron Company.

Q. Since 1935?

A. Yes, sir.

Q. Since 1935 do your duties as superintendent take you into both classes of mines underground?

A. They do.

Q. How often during that period of time would you say you have been underground in the ore mines?

A. With the exception of the past year I go underground—went underground in the ore mines two or three times per week, and will average twice a week.

Q. Do you go around for inspections?

A. Yes, sir.

Q. Was that more or less minute?

A. Yes, sir.

Q. Well, what about coal mines during that period of time?

A. I was underground in them about the same number of times, an average of twice per week.

Q. Were your inspections similar?

A. They were.

Q. So you were in each one every week?

A. Right.

Q. Have your visits recently been more or less frequent, during the last year?

A. Been less frequent.

Mr. All:

Now, we offer to prove this with respect to the Lewisburg Number 2 coal mine:

This mine was opened in 1920 by a slope driven from the outcrop of the Mary Lee Seam. This main slope is driven 12 feet wide and is from 6 feet to 22 feet high.

The dip is 25 percent near the surface and tapers down to 12 percent for a distance of 4000 feet. From that point the grade flattens out from 1 to 2 percent for remaining distances to the faces.

A manway is driven parallel with the slope, and men entering the mine walk the 4000 feet to the slope bottom. On leaving the mine all men are hoisted up the slope after completing their shift of seven hours at working place or face.

The mine is divided into three sections. The distance to the nearest section is 7000 feet from the portal and the fartherest distance is 18,000 feet. The elevation on the surface at the portal is 562 feet above sea level and the lowest elevation inside the mine is 90 feet above sea level. The minimum cover, or vertical distance, over the coal seam is 310 feet; maximum cover is 650 feet.

As stated, workmen walk to the slope basin. There they enter mantrips and are transported to the various sections of the mine.

The greatest walking distance for the underground miners is between four and five miles and the shortest distance is approximately two miles, and the distance from the mouth of the mine to the most remote working places has increased approximately 1000 feet since 1938. The distance from the mouth of the mine to the shortest—to the nearer working places to the slope has not increased at all; they are practically the same distance.

In the Flat Top Mine the greatest distance to the working places from the mouth of the mine is approximately 27,000 feet, and to the nearer working places 21,400 feet. In 1938,—the latter part of 1938 the remoter working places were approximately 25,000 feet from the mouth of the slope, and the nearer working places were about the same as they are now.

The travel distance in both mines is covered by the underground workmen partially by riding on man trips and partially by walking.

The travel conditions as between the coal mines and the ore mines are very similar.

The hazards of the—Put it this way,—that they use—there are relatively more injuries of all sorts in the coal mines than there are in the ore mines, and we offer to prove by the witness that in his opinion the hazards attending coal mining are greater—are greater in number and greater in severity than they are in ore mines.

That the custom and practice and usage with respect to the carrying of tools in coal mines to the working places is that the company customarily takes the tools to the working places as in the ore mines, but that the men, if they wish, may take the tools to their working places, and that is sometimes the case, and that the conditions in this respect—with respect to carrying the tools are practically the same as—in the ore mines as in the coal mines.

That he is familiar with the contracts that have been made with—between the company and the representatives of the United Mine Workers of America since 1934 and that those contracts, since that time, have carried the definitions of working place and work time that the other contracts which have been offered carried,—the same as the commercial contracts, and that under those contracts time is computed from working place to working place, and that the travel time is not included in the computation of work time or in the consideration of work time and has not been and has never been in any coal mine with which he has had any experience since he became familiar with the coal mining business, and that he does not know of, and has never heard of time being computed on any basis in coal mining operations than working place to working place; that he has never heard of travel time being included in work time in Alabama operations.

I want to introduce the Sloss contracts, and I would like to have leave—

Mr. Harris:
You mean you are offering them for identification?

Mr. All:
I am offering them for identification. I want to offer them in evidence.

Mr. Harris:
Of course, we object to them.

The Court:
What do you offer to prove?

Mr. All:
I want to offer in evidence the contracts.

Mr. Harris:
Are those coal contracts?

Mr. All:
Yes, sir, coal contracts.

Mr. Harris:
We object to each one, separately and severally.

The Court:
Sustained.

Mr. All:
I want leave to use copies instead of the originals.

The Clerk:
Do you want them marked for identification?

Mr. All:
Yes, sir.

The Clerk:
They will be 39, 40, 41 and 42.

(Thereupon contracts between the Sloss-Sheffield Steel & Iron Company and the United Mine Workers of America were marked for identification Plaintiffs' Exhibits 39, 40, 41 and 42.)

Mr. Harris:
Have you finished with your offer of proof?

Mr. All:
I think that is all.

The Court:
Is that all?

Mr. All:
Yes, sir. Now—.

Mr. Harris:
We—

Mr. All:
Now, Mr. Harris, just a minute.
This has no reference to this matter here, but I want to put in the record, as has been done in some of the other cases, a list of the classification of occupations in the ore mines of the Sloss Company.

Mr. Harris:
Let me get my objection.

The Court:
Let him get his objection.

Mr. All:
I thought he had stated it.

The Court:
No.

Mr. Harris:
We object to that offer of proof as to all these coal mining operations he has offered by this witness.

The Court:
It is sustained as to each defendant, and the intervener.

Mr. All:
It was understood it was on behalf of each plaintiff?

The Court:
Separately and severally.

Mr. All:
And each one has a separate and several exception.

The Court:
What is that about the ore mines?

Mr. All:
Just a list of the occupations.

The Court:
What is it?

Mr. Harris:
It is the same thing Mr. Burr handed me and I have been checking it, and I haven't finished checking it yet.

The Court:
Is this the occupations?

Mr. All:
Just the number of occupations of those in the ore mines.

Mr. Harris:

I would like an opportunity to check it. Just hold it and offer it out of order.

Mr. All:

I want to straighten this out before Mr. Costner goes, because I would like to excuse him to do some work.

The Court sustained objection to this letter from Mr. Davis to Mr. Richardson, memorandum of the agreement in 1934 on the theory of not having the witness here to prove the execution of it.

Mr. Harris and I had an agreement about that letter. It is the same letter. It provided the men go back to work—

Mr. Harris:

We had that conversation up before the Court before we adjourned the other afternoon.

Mr. All:

Yes, sir, but I want the record to show it is admitted in evidence rather than excluded. The record shows it is excluded.

The Court:

I will admit it.

Mr. Harris:

Of course, we didn't waive our objection.

Mr. All:

No.

Mr. Harris:

I merely stated if Mr. All had that letter, just as other companies received letters—

Mr. All:
Yes, sir.

Mr. Harris:
—the same letter—

Mr. All:
Yes, except you made no point on not having the witness here.

Mr. Harris:
Oh, no, I was not wasting time to bring the witness in here. I object on all the other grounds.

Mr. All:
All right. That is Sloss Exhibit Number 2.

(Thereupon Sloss Exhibit Number 2, heretofore identified, was received in evidence.)

Mr. Harris:
Of course, I don't admit his classification or description of the letter, because that was one of those letters of understanding you were talking about.

Mr. All:
It was in 1934, and I have put a—

The Court:
It was the letter that took the place of a contract?

Mr. All:
Yes, sir.

The Court:
That was a letter of understanding?

Mr. All:
Yes, sir.

The Court:
Is there anything else, Mr. All?

Mr. All:
Is there any necessity to identify those? We might put these in—

Mr. Harris:
I thought you were going to let me check them.

Mr. All:
Well, will you do that?

The Court:
He has agreed that may be introduced out of order.

Mr. All:
Now, we want to do the same thing as to Woodward out of order. I will give you copies to check.

Mr. Harris:
As to Woodward, we object to anything about Woodward.

The Court:
Woodward is not a party to the case and I don't think that is material.

Mr. All:
It is just a matter of convenience.—

The Court:
I sustain the objection.

Mr. All:
We except.

Mr. Harris:
No questions to Mr. Costner.

(Witness excused.)

The Court:
Court is adjourned until a quarter of two.

(Whereupon, at 12:[illegible] P. M., July 22, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess, 1:45 P. M.

The Court:
Are plaintiffs through?

Mr. Burr:
No, sir.

The Court:
Who will you have for the first witness?

Mr. Burr:
If Your Honor please, there was one witness I neglected to mention in the offer of proof this morning that I want to refer to and include briefly without bringing him back. That was the witness Mr. J. M. Smith, Your Honor will recall, from Ishkooda, that had been working with the company and in the district so long.

The Court:
Yes; sir.

Mr. Burr:

If Your Honor will recall, he testified about a large part of his time being in the various coal mines.

The Court:

Yes, sir.

Mr. Burr:

And it was at that time Your Honor first sustained the objection about going into the coal mines, and I want to offer to prove by Mr. Smith the conditions in the coal mines I asked him—including him in the showing with Mr. Hassler. Is that satisfactory?

Mr. Harris:

Yes, sir. We object, and objection sustained.

The Court:

Yes, sir.

Mr. Burr:

There is one fact I want to add. I want to prove by him that the conditions of work are so similar in the ore mines that he was able to go from a miner in the coal mines to a foreman in the ore mines.

Mr. Harris:

We, of course, object to that as immaterial.

The Court:

Sustained.

Mr. Burr:

Now, we want to ask Your Honor's indulgence for withholding three witnesses who cannot be present,—they are all short witnesses,—on account of sickness or being called out of town.

Mr. George Neal, our superintendent at Wenonah, is still sick. If he recovers I want the opportunity to examine him briefly.

Mr. Hallman has been away on his vacation. His testimony will be confined to the testimony—there is one exhibit, I think, about—in connection with Mr. Goodwyn's testimony where Mr. Goodwyn testified he and Mr. Hallman and some others kept a check on the time the miners at Muscoda reached their working places and left their working places; and, third, Mr. Vance, who was here, and who was called to Washington to appear before this mediation board who had these two cases—he is expected back tomorrow.

Those three, so far as I know, constitute our oral testimony.

Mr. Harris:

I am very anxious indeed that when the plaintiffs close I will know that the plaintiffs are through.

As I understand, when plaintiff rests his case, then thereafter he can't put on witnesses to make out his main case, but only in rebuttal, and there are methods we have used under the Alabama practice if a witness was not present we wrote out a showing, or we could stipulate about it, but I would be very much adverse to having the plaintiffs put on a part of their case and then say we will have something else we will put on later. I want to know exactly where I am and what I am confronted with when the plaintiffs rest.

The Court:

I think we ought to do that. I think they should put in their testimony or make a showing.

Mr. Burr:

This is not a trial before a jury.

The Court:
I know.

Mr. Burr:
I have indicated what their testimony will be. Mr. Neal attended Court two or three or four days and went to put up his car and had this heart attack. If he recovers I should have his testimony in all fairness.

And certainly Mr. Vance couldn't be here. He was called to Washington to appear before the mediation board on account of these two threatened labor troubles out at the plant.

The Court:
Couldn't you prepare a showing for Mr. Vance?

Mr. Burr:
Yes, sir, but I want you to look the witnesses in the eye. I wouldn't want to be put on a showing for these witnesses in a case of this kind.

Mr. Harris:
He states we are not before a jury, and this is not a jury trial, and then next we have a jury argument.

Mr. Burr:
No, it is not a jury argument at all.

Mr. Harris:
This, to me, is a very important case,—and extremely important case. It is one the gentlemen have had under consideration for months. I think I am entitled to know where I am when they close. If they put it on by piecemeal then we will get into an irregular proceeding. They can submit a showing or stipulation, but when they get through—if I have evidence I may want to offer or may not want to offer—

The Court:

The trouble—if it is tried by piecemeal and he brings in testimony by these witnesses—I don't approve that.

Mr. Burr:

Then we ask the opportunity for writing showings for these witnesses. I couldn't help Mr. Neal being sick.

The Court:

I know. It is probable he will not be able to testify. I tell you what to do,—you write your showings for Mr. Neal and Mr. Hallman and Mr. Vance—

Mr. Burr:

I will do it as quickly as I can get to a stenographer.

The Court:

And then I will do this in fairness to both sides. If these witnesses return and are able to testify, I will let you show what is in the showings.

Mr. Burr:

That will be all right. I will put in the showing what I want to prove by them.

The Court:

In other words, I am confining the testimony to the showing. You will know how to offer your evidence.

Mr. Burr:

I expect I can cover these by showings if I extend myself. I will try to do it so anyway. It is hard to do.

Mr. Harris:

I think that would be better.

The Court:
Well, let it go at a showing.

Mr. Burr:
We can handle the other matter if it comes up later. I will prepare the showings and have them ready tomorrow.

Mr. Harris:
I want them before I start.

Mr. Burr:
Well, we will take a recess and dictate them.

The Court:
Is there anything else you want to offer?

Mr. Burr:
Yes, sir, there is some documentary evidence we want to offer.
Let me have the depositions taken in Minnesota.

Mr. Harris:
In order that I don't have to take up Your Honor's time, I will state as to the depositions, for myself and all my clients, individually, and as representative of a class, I object to all the depositions, separately and severally, taken outside of the State of Alabama with reference to ore mines, whatever state they are in, and whether those depositions were taken in the first instance by the plaintiffs or whether they were taken in the first instance by the intervener.
Now, those depositions were taken on oral interrogatories, and my fundamental objection to them is that they throw no light on the issues involved in this controversy here; they are too remote; they deal with transactions between other parties than the parties to this litigation;

that they are illegal and irrelevant and immaterial and incompetent.

I have heretofore indicated, in more detail, to Your Honor my theory of this case, and whether either one or both of them thought they were admissible, I don't, so I want to preserve my grounds of objection to each one whoever offers it, whether by the government or by the plaintiff.

Mr. Smith:

We make that same objection, if the Court please.

The Court:

All right.

Mr. Burr:

So Your Honor can understand in a general way what those depositions are about, I might state,—while they speak for themselves,—they are depositions of witnesses taken by the Administrator Fleming as to which notice was given to us and to the other parties. We appeared and cross examined the witnesses. No other parties appeared except the attorneys for the Intervener Fleming, who took the testimony, and the plaintiffs by counsel.

We made a number of objections before the Commissioner. We are withdrawing those objections so there can't be any delay in considering our objections, and are offering the depositions in their entirety.

They relate in the main,—all of them, and each witness testified in the main to ore mines in the Minnesota field, which has already been shown by the depositions admitted this morning, is over 90 percent of the producing iron ore fields of the United States. The same thing we said this morning with reference to that exhibit, and the same thing that makes it admissible makes these depositions admissible.

Mr. Brodie:

I am in a somewhat peculiar position because the depositions were originally taken at our instance.

Under the rules, however, the witnesses do not become witnesses of anyone until the depositions are offered, and then they become the witnesses of the party offering them.

Now, at the time we took the depositions, the evidence seemed to us relevant under the pleadings and under the scope the case appeared to be taking.

In view of the case that the plaintiffs have made out so far as we are content to rest on the situation in the Plaintiffs' minds and on the issue whether the employees of the plaintiffs, when they go down in the mines, are at work, and so that—I don't know whether I can object or not. Of course, we will accept whatever ruling Your Honor makes on them. I don't think—in view of the situation the case—the posture the case has assumed, that evidence is now relevant.

Mr. Burr:

If Your Honor please, these—are you through, Mr. Brodie?

Mr. Brodie:

Yes, sir.

Mr. Burr:

That is an unusual position for a party to take who has taken testimony. We think he is right in the first instance, and there is no question about the evidence being material in our view of the case. It is not what the issues are that have been made here. The issues have been made by Section 7 and what Section 7 means, and the question as stated here in the agreed order on pre-trial hearing, the order of the Court on that hearing,

and that order states that the position of all the defendants is,

"that the workweek covers all time from portal to portal, as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregates of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out."

Now, it is absolutely certain that Congress didn't pass this law for the benefit of the Tennessee Company mines or Sloss or Woodward or Republic, or to penalize the Alabama mines. We are proposing to show, by these depositions taken by the Government, what conditions are, not in copper mines, not in gold mines, not in zinc mines, not in coal mines, but in ore mines when this Act was passed. That question can't be eliminated in this case.

It is a funny position for the Administrator to try to eliminate that issue, and this evidence, when his whole opinion is based upon the general conditions throughout the United States. That is all he bases it on. You can read it from the top to bottom. He states in the opinion and report that the portal to poral has been in operation in all the mines in the United States, and that Alabama is the only—he uses that expression, the only underground metal mines of the United States that are on the face to face basis.

Now, we are proposing to show by testimony taken by them, not to tear down the opinion of the Administrator, because, as everybody has stated here, it is not what we are trying, but in support of our contention, which is fundamentally correct, that Congress when it passed this law wasn't considering the Alabama mines, ore mines alone in Alabama, it wasn't considering the ore mines elsewhere alone.

Now, I don't understand—do you object to them or not? I don't understand what his position is.

Mr. Brodie:

Are you through, Mr. Burr?

Mr. Burr:

Yes, sir, I am through.

Mr. Brodie:

At the time these depositions were taken, the complaint—the pleadings with reference to the Administrator's opinion and to the,—as it was claimed, erroneous opinion of the Administrator, asked that the opinion of the Administrator be declared illegal, and there were other similar matters in the complaint. Under that broad complaint we didn't know what we had to meet. We took these depositions—I would like to say one thing, Your Honor. We are not afraid of the facts in those depositions. There isn't any question about that.

Mr. Burr:

Well, what is the trouble? What is the worry about them.

Mr. Brodie:

Well, the worry is—there is no worry; there is no worry about it.

The Court:

Now, this is with reference to Minnesota?

Mr. Brodie:

Yes, sir, Minnesota.

Mr. Burr:

Yes, sir; ore mines.

Mr. Brodie:
Ore mines.

The Court:
I am going to admit them.

Mr. Burr:
Do you want them read?

The Court:
I think, Mr. Burr, probably it would be better for the Court for you to read them.
Are they pretty lengthy?

Mr. Burr:
Yes, sir, pretty lengthy,—about nine or ten witnesses.

The Court:
How many pages to the witness?

Mr. Burr:
I haven't opened them. I think the best way would be to read them.

The Court:
I think they ought to be read.

Mr. Burr:
I will get some of these young fellows to read them.

The Court:
Let one read the questions and the other the answers.

Mr. Burr:
Now, as I stated to Your Honor, we are withdrawing the objections, so they need not stop to read the objec-

tions and argument of counsel, but just the testimony of the witnesses.

The Court:
I didn't get that.

Mr. Burr:
We withdraw our objections, so it is not necessary to read those. Just read the questions and answers.

The Court:
Both direct and cross?

Mr. Burr:
Yes, sir.

Mr. Brodie:
If Your Honor please, I am somewhat vague as to what the cross examination was about. I don't make a blanket withdrawal of the objections to the cross examination. I will let the objections stand, and when we come to them I will have the right to press them or not as I see fit.

The Court:
The Court will consider your objections as they are brought out.

Mr. Burr:
As we get to them?

The Court:
Yes, sir. One of you read the questions, and the other the answers.

Mr. All:
I will read the questions and Mr. Bronaugh will read the answers.

(Thereupon, with Mr. All reading the questions and Mr. Bronaugh the answers, the reading of the deposition of Sam E. Swanson was begun, and was continued through the answer, "That is what I am generally known as," on page 8 of said deposition, when the following occurred:)

Mr. Harris:

May I interrupt, Mr. All, to bring up something else? This will probably take all afternoon?

Mr. All:

I think it will.

Mr. Harris:

This is pay day. Some of these men want to go get their pay.

The Court:

How many depositions are there? I don't want to take up all afternoon.

Mr. Brodie:

There are 391 pages.

The Court:

All right. We will make up the time tomorrow.

Mr. Harris:

Any of you men who want to draw your pay can go out to your various places.

The Court:

Be back tomorrow morning at 9:30 Daylight Savings Time.

Mr. Harris:

Thank you very much.

(Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued through the answer, "Iron ore mine,—underground and open pit, both," appearing on page 10 of said deposition, when the following occurred:)

Mr. Brodie:
If Your Honor would prefer to follow this with my copy—

The Court:
No, I will just listen.

(Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued through the question, "Now, after 1929?" on page 14 of said deposition, when the following occurred:)

The Court:
That was a shaft mine?

Mr. Bronaugh:
Yes, sir.

(Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued through the question, "As a matter of fact the percentage of underground out of the total is about 16 or 17 percent, isn't it?" and the answer appearing on page 51 of said deposition, "I can't believe that," when it was stipulated by counsel that the answer should read, "I can believe that."

Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued to page 59 through the question, "You would go down to the main loading station?" and the answer, "Yes, we worked down there,"

when it was stipulated by counsel that the answer should read, "Yes, we walked down there."

Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued through the answer beginning on page 86 and engine on page 87, "Absolutely not. They had nothing to do with the eight hour collar to collar because it has never been included in any contract that I have seen made by the Steel Workers Organizing Committee," when proceedings were in recess from 3:30 P. M. to 3:40 P. M. at which time proceedings were resumed, continuing the reading of the deposition of Sam E. Swanson, beginning with the question on page 87, "You say you never have seen that provision included in a C. I. O. contract?" and continued through the question on page 89 of said deposition, "Now, I am not asking this question in the sense of saying anything improper, you understand, but merely for the purpose of getting some dates: When was the first time that any representative of the Wage and Hour Division talked with you about this matter?" when the following occurred:)

Mr. Brodie:

There is an objection here that question is incompetent, irrelevant and immaterial.

The Court:

I will overrule the objection.

(Thereupon the reading of the deposition of Sam E. Swanson was resumed, beginning with the answer, "It was on a Sunday, a couple or three weeks ago," on page 89 of said deposition, and the reading of said deposition completed.)

The Court:

How many depositions are there?

Mr. Bronaugh:
Two, four, six,—nine.

The Court:
Have you got one or more in Minnesota?

Mr. Brodie:
There are nine witnesses.

The Court:
Who are they?

Mr. Brodie:
Sam E. Swanson, George Micheal, Burck, Leander Runn, John DeBeltz, Anton Pechek, Joseph Bovitz, Andrew Sopko, Florindo Pilotto and Frank Eagloski, and then there are some exhibits.

Mr. Burr:
The exhibits are the minute book and a contract.

The Clerk:
They will be Plaintiffs' Exhibit 35, these depositions.

Mr. Harris:
I don't think each deposition would be in the form of an exhibit.

The Clerk:
I am just putting them in one exhibit.

(Thereupon the depositions of Sam E. Swanson, George Micheal Burck, Leander Runn, John DeBeltz, Anton Pechek, Sam E. Swanson (Recalled), Joseph Bovitz, Andrew Sopko, Florindo Pilotto and Frank Eagloski were marked Plaintiffs' Exhibit No. 35, together with the exhibits thereto.)

Mr. Burr:
Off the record.

(Here followed an off the record discussion.)

Mr. Harris:
Judge, the other day,—they turned over to us Friday a lot of their original exhibits, and if it suits their convenience, Mr. Elman will return them to them when we adjourn.

Mr. Burr:
Just give them back to the clerk.

Mr. Harris:
They substituted copies and we have got the originals.

Mr. Bronaugh:
You can give them to us after we adjourn.

Mr. Harris:
If that meets your convenience, so that will save our responsibility for original documents.

The Court:
That will be done this afternoon.

Mr. Burr:
We offer next the deposition of Mr. Rupp, which deposition was taken by us in Colorado in reference to the only iron ore mine—those are iron ore mines in Colorado. There are two witnesses, but one of them, a man named Collins, is in reference to iron ore mines exclusively, but so far we are offering only the deposition of Mr. Rupp.

The Court:
There are objections to that, I assume?

Mr. Harris:

Yes, sir; I have an objection to every one, no matter by whom taken.

(Thereupon Mr. Burr began the reading of the deposition of George Rupp, and continued the reading of said deposition to where Exhibit No. 1 to said deposition was offered, when the following occurred:)

Mr. Brodie:

There is an objection to that contract. I don't know why he objected. I assume because it was a copy and not the original contract.

The Court:

Well, it is overruled.

Mr. Brodie:

All right, sir.

(Thereupon Mr. Burr continued the reading of the deposition of George Rupp, and read to where the words "seven hours at the usual working place," occur in said deposition, when the following occurred:)

Mr. Harris:

We move to exclude that remark about the coal mines.

The Court:

That is about the coal mines?

Mr. Harris:

Yes, sir.

The Court:

Well, that will be sustained. All that about the coal mines is stricken.

Mr. Burr:

I might state for Mr. Harris' information there are two or three references in the man's testimony as to coal mines too.

Do you want it in or out?

Mr. Harris:

Personally, I haven't seen any of these depositions.

Mr. Burr:

I want to tell you that now.

Mr. Harris:

Well, wherever coal mine testimony comes in, no matter from what direction, we object to it, and I understand it is out.

Mr. Burr:

And Your Honor sustains that objection?

The Court:

Yes, sir; it is stricken.

Mr. Burr:

And we except, and, with this exception, that it was gone into by the government.

Mr. Brodie:

Well, my history of the deposition is imperfect. The witness, in stating where he had worked, said he worked in a coal mine in North Dakota or something like that.

Mr. Burr:

And then your lawyer questioned him about it.

Mr. Brodie:

Then I agree it may be stricken.

The Court:
Then that will be stricken.

Mr. Burr:
We just wanted to call your attention to it.

Mr. All:
I want to call attention to this: Do you offer in evidence agreement between the Colorado Fuel & Iron Company as Exhibit 2?

The Court:
That is coal?

Mr. Burr:
That is also here. That was not objected to by the administrator. The question as to admissibility—

The Court:
Well, Mr. Harris is not bound by that.

Mr. Burr:
No, sir.

Mr. Brodie:
Well, under the rules we are dealing with, that any objections where any depositions are taken on oral testimony, the objections may be interposed at the time they are read, and the fact we didn't object before is not a waiver—

The Court:
I think that is true.

Mr. Brodie:
The only waiver is to the form of the question, whether leading or something of that kind, so that the question

may be reframed, so at this time I object to all reference to that coal contract.

The Court:
I sustain the objection.

Mr. Burr:
And we except to that ruling.

Mr. All:
Here is another question. It has the total number of employees working in the mines of these companies, including coal and iron.

The Court:
That will not be considered.

Mr. Burr:
Well, I will not read it.

The Court:
Just glance over it, and if it includes coal—

Mr. Burr:
It includes coal.

The Court:
I understand.

Mr. Burr:
is that all right.

Mr. Harris:
We object to that.

The Court:
Sustained.

(Thereupon Mr. Burr resumed the reading of the deposition of George Rupp and read through the question and answer, "Please state how many men you have in the ore mines," and the answer, "Approximately 500," when the following occurred:)

Mr. Burr:
Then the other is as to the coal mines, which I will leave out, and with respect to which I understand we have an exception.

The Court:
Oh, yes.

Mr. Burr:
Next is with respect to the contract, and we will cut that out with the understanding we have an exception.

The Court:
It is understood you have an exception to all parts excluded.

(Thereupon Mr. Burr resumed the reading of the deposition of George Rupp and completed the same.)

Mr. Burr:
We offer that deposition and the exhibits.

The Clerk:
That will be Plaintiffs' Exhibit No. 37.

(Thereupon the deposition of George Rupp, with the exhibits thereto attached, was marked Plaintiffs' Exhibit No. 37.)

Mr. Burr:
It is not really an exhibit, but you can call it that.

The Clerk:
And the exhibits attached to it.

Mr. Burr:
Judge, we have a little more documentary evidence that I don't think will take over half an hour in the morning.

We would like to know, so we can prepare ourselves, at what particular mine you will start, so we can have our superintendent of that particular mine and not have our superintendents of the others here.

Can you give us that information, Crampton?

Mr. Harris:
Yes. I will start with Ishkooda in the morning.

Mr. Burr:
Off the record.

(Here followed an off the record discussion.)

Mr. Harris:
Now, before we go—this applies to Mr. All, and I don't know just what it is. I had Mr. Elman check on your exhibits, and there have been some little errors crept in on two of your exhibits by the Sloss Company.

Exhibit 14, the original exhibit, has no rate list attached at all. Your substituted copy has a rate list, but your exhibit hasn't.

Then, on Exhibit 18, the rate list in the original and the substituted copy differ.

There has been some mistake in your office, somewhere.

The Court:
Well, just make your copies like the originals.

Mr. All:
That is the way to do that. That is the only way to do it.

The Court:
Yes, sir.

Mr. Harris:
There isn't any rate list at all on the original on 14.

Mr. All:
Crampton, that may be misplaced. We will check that.

The Court:
Are you going to turn over the originals?

Mr. Harris:
Yes, sir; we will turn them over this afternoon if it suits Mr. Monaghan's convenience. We will be glad to get rid of them.

Mr. Burr:
What time in the morning?

The Court:
We will meet tomorrow morning at 9:30, and everybody is excused until that time.

(Whereupon, at 4:40 P. M., July 22, 1941, an adjournment was had to 9:30 A. M., July 23, 1941.)

July 23, 1941, 9:30 A. M.

Court met pursuant to adjournment.

Mr. Burr:
Shall I go ahead, Your Honor?

The Court:

Yes, sir.

Mr. Burr:

I want to examine Mr. Mitchell first, Your Honor. Come around, Mr. Mitchell.

2173 F. R. MITCHELL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Mitchell, what is your profession, please, sir?

A. Mining engineer.

Q. And how long have you been engaged in that profession?

A. About twenty years.

Q. Are you a graduate of some university or college?

A. The Michigan College of Mines.

Q. With what degree, if you obtained a degree?

A. Engineer of Mines.

Q. Where did you go to work after receiving that degree, if you went to work?

A. The Cleveland-Cliffs Iron Company.

Q. Where were their mines located?

A. Michigan and Wisconsin.

Q. Were they underground or open pit mines?

A. They are both.

Q. They had both at the time you worked for them?

A. Yes, sir.

Q. Do you remember the names of some of the mines?

A. Yes, sir; in the Marquette District they had the Cliff Shaft—

Mr. Harris:

If the Court pleases, I want to interpose to the testimony of this witness the objection I interposed to interrogatories and depositions dealing with mines outside the State of Alabama.

The Court:

Overruled.

Mr. Harris:

That goes all the way through.

The Court:

Yes, sir.

Mr. Burr:

May it please the Court, one of my main purposes is to put Mr. Mitchell on to explain the mines in the Lake Superior District so the Court can understand the testimony given in the depositions taken in Minnesota.

The Court:

Mr. Burr, you are just going into the underground mines?

Mr. Burr:

I am going to deal with that first, and then I am going to the open pit. We can discuss that at the time.

Q. Name some of the other mines of this company, just the underground mines.

A. Athens; that is also in the Michigan district.

Q. Just the underground mines.

A. Yes, sir.

Q. All right.

A. In Minnesota we had the Boeing and we have Halmer. Those are all the underground mines.

Q. What sort of work did you do for this company while you were with them,—during the time you testified you were with that company?

A. Mining engineering work, surveying and design.

Q. Was that inside or outside the mines?

A. Inside and outside.

Q. Were you in the mines frequently?

A. Practically every day.

Q. What was your next mining experience?

A. My next mining experience was with the Tennessee Company.

Q. When did you come with the Tennessee Company?

A. In January, 1924.

Q. Have you been with the Tennessee Company since that time?

A. Yes, sir.

Q. Now, what different positions have you held with the Tennessee Company since you have been with that company?

A. My position with the Tennessee Company has been the same since I came with them.

Q. And that position is what?

A. Division engineer of the Wenonah Division.

Mr. Harris:

I can't hear you.

The Witness:

I beg your pardon, sir. I will try to talk louder.

Mr. Harris:

I did not hear the last one.

The Witness:

Division engineer at the Wenonah Division.

The Court:
Division engineer?

The Witness:
Yes, sir.

Q. Have you any duties to perform with reference to the other mines of the company on the mountain, or has your work been confined solely to the Wenonah Division?

A. Just in a general way.

Q. Have you or not been in the other mines?

A. I have been in all the other mines.

Q. All right, sir. These mines, the underground ore mines in Minnesota and Michigan you told us about—first, since you worked there, have you seen those mines again since that time; have you been in that field again?

A. Yes, sir.

Q. When did you go?

A. In April of this year.

Q. Who accompanied you on the trip in April?

A. Milton Baird and Norman Thompson.

Q. Mr. Milton Baird, who is Chief Clerk for Mr. Ball?

A. Yes, sir.

Q. And Mr. Norman Thompson, Superintendent of Mines for the Republic Company?

A. Superintendent of Mines for the Republic Company.

Q. On that trip, did you and these other gentlemen go into the underground mines in that territory?

A. Yes, sir.

Q. Will you tell us briefly the mines you went into?

A. Went into the Godfrey in Minnesota, and Sunday Lake and Geneva and Montreal. Those mines are in the Gogebic District.

Q. Those mines—did all of them have vertical shafts as entrances, or slopes; what kind of entrances?

A. All vertical shafts.

Q. All vertical shafts?

A. Yes, sir.

Q. Were they shafts of different depths in those mines?

A. Yes, sir. They varied from 230 feet to 3500 feet.

Q. What was the shortest one? We will take that as a typical short mine.

A. The shortest mine was the Godfrey.

Q. And what was the longest?

A. The Montreal.

Q. How long was the shaft in the Godfrey Mine?

A. 230 feet.

Q. How long was the shaft in the Montreal Mine?

A. 3500 feet.

Q. Were the other mines varying distances between those two?

A. Yes, sir.

Q. In mining that ore up there in the Lake Superior district—That is what it is usually called,—Lake Superior district?

A. Yes, sir.

Q. Can you explain to the Court briefly how that mining is done, whether they use levels or what?

A. Could I use the blackboard?

Q. Yes, sir. Suppose you take a mine that has more than one level and just show how that mining is done.

A. In the Mesaba or Gogebic?

Q. The longest one you mentioned.

A. That is in the Gogebic.

Q. Take that mine.

The Court:

Mr. Burr, can he draw the seam of ore, showing the pitch?

A. That represents the ground. The ore pitch is to the north, about 80 or 85 degrees. The shaft is usually

sunk in what we call the footwall or rock right under the ore. That would be on this side of the ore body. These levels we are talking about are driven out to the ore body at intervals of, roughly, .100 feet.

Q. Suppose you put two or three more.

A. All right. This would be the first level. These come at intervals of 100 feet, and in the Montreal they are down to the 35th level, so they are put down to 3500 feet.

Q. Suppose you put your levels on down here.

A. (Witness draws on blackboard.)

Q. You say the Montreal is down 35 levels?

A. Yes, sir.

Q. How far down is the shortest mine,—the Godfrey, how many levels did it have?

A. Just one level. It is down 230 feet from the surface.

Q. It is 230 feet?

A. Yes, sir.

Q. The Godfrey Mine?

A. Yes, sir.

Q. How do the men get down to the various levels and how did they when you were up there in April?

A. They ride down in a skip, which works in a shaft, and get off at their working levels.

Q. That skip, is that what you call an elevator cage?

A. It would be called an elevator in a building.

Q. Does it stop the men at the various levels?

A. It stops at the different levels where men are working.

Q. And the men get off at the various levels?

A. Yes, sir.

Q. When they get to the level—use this level because it is larger, and show the Court where the working place is after the men get in the level?

A. Let's take this 35th level. These levels are, in the case of the Gogebic Mine, driven in the rock, and are quite a distance from the ore body. When they go down to mine this ore they use what is called the sub-level cave-in method. These sub-levels are up here 25 feet apart. Connecting those subs with the main levels are raises.

To get into their working places, which may be on the top sub above the 35th level, the men go down the skip and walk out through the drift and climb the last 25 or 50 or 75 feet above their level and go down this level to their working places.

Q. As I recall, some of the witnesses in their depositions, used the word "ladder". Is that what they use?

A. They use ladders to climb the raises.

Q. Approximately how high would you say those raises are the men would have to climb?

A. They would be a maximum distance in this Montreal Mine of 75 feet.

Q. How does it run in the other mines?

A. Most of the mines are 100 foot levels, but where they use a top slice method, as they do in the Mesaba range, the last level would be 90 feet.

Q. How far is this distance from where they get out of the cage to where they begin to climb the ladders?

A. That distance varies.

The Court:

In other words, he rides—

Mr. Burr:

He walks that distance.

The Witness:

He might have to laterally walk this way a good distance.

The Court:

What is the longest distance?

Q. Those you found up there?

A. About 2,000 or 3,000 feet.

Q. The shortest distance would be about what?

A. The shortest distance would be about as low as 2,000 feet.

Q. The distance would depend on how far the level had to go before it struck the ore body—

A. Yes, sir, and then how far the limits of the property were out this way.

Q. Is that ore—what is the thickness of that ore?

A. These deposits in the Gogebic range and in the Mesaba range are not a seam.

Q. What do you call it?

A. A mass of deposits.

Q. A mass of deposits?

A. A mass of deposits.

Q. How far does that mass run?

A. In the Mesaba range maybe three miles long, a mile wide and several hundred feet thick.

Q. And in the Gogebic Range?

A. In the Gogebic Range they are much smaller, possibly a mile long, a half mile wide and several hundred feet thick.

Q. After the miner has climbed the ladder and gotten in the working place, up there, just in a general way how is the wrok performed at that particular mine? Do they use dynamite? Do they use mechanical loaders? What tools do they use? Just describe how that is done.

A. In the Gogebic and Mesaba ranges the procedure is practically the same. The ore is rather soft, but it has to be blasted. The procedure is to drill holes, load them with dynamite and blast out the ore and then load it with scrapers just as we do here.

The timbering is a little different because they do what they call mining on timbers. The timbering is cut very close to the face. Aside from that the procedure is very similar to what it is in Alabama.

Mr. Burr:
I ask that be identified as Plaintiffs' Exhibit—

The Court:
Is that Plaintiffs' or T. C. I.?

Mr. Burr:
Just make it Plaintiffs'.

The Clerk:
Plaintiffs' Number 37.

(Thereupon a photograph showing timbering in mines in the Lake Superior District was marked Plaintiffs' Exhibit No. 37.)

Mr. Harris:
That deals with operations up there?

Mr. Burr:
You have an objection to every bit of it.

Mr. Harris:
Not only as to questions, but as to exhibits and everything else?

The Court:
Yes, sir.

Mr. Burr:
Yes, sir.

Q. I show you Plaintiffs' Exhibit 37 and ask you if that is a correct picture of the timbering you talked about, showing the timbering close to the face?

A. Yes, sir, that is a typical picture and might apply to either the Gogebic or Mesaba Range.

Q. When the ore is shot down in those places, how is it gotten to the surface?

A. After it is shot down up there, it is dragged by scrapers—

Q. Are those mechanical scrapers?

A. Mechanical scrapers, yes, sir.

Q. The same type as we use here in Alabama?

A. The same type as we use here in Alabama except they are a little smaller.

Q. Are the drills substantially the same as we use here?

A. The drills they use in the Mesaba field are smaller. In other words, they are an augur drill instead of a rotary drill.

Q. After it is shot down how is it handled?

A. It is dragged down to a car—

Q. After the ore is gotten in the car in these mines up there, how is it transported to the outside?

A. The cars are transported by means of electric locomotives to a skip—rather, to a pocket at the shaft and dumped into the skip and drawn to the outside.

Q. Is that system substantially the same as our system here?

A. Practically the same.

Q. In those operations up there, do they have and did they have when you were working there, what you might call two sets of crews, the actual producing crews and the service crews?

A. Yes, sir, they have two sets of crews, mining crews and service crews.

Mr. Burr:

I will get you to identify this one, please, sir.

The Clerk:

Plaintiffs' Exhibit Number 38.

(Thereupon a photograph showing ladder in raises in mines in the Lake Superior District was marked Plaintiffs' Exhibit No. 38.)

Q. I show you a picture, Plaintiffs' Exhibit 38, and ask you to state whether or not that is a correct picture of the kind of ladders that were used when you were up there in April, and the way the men you saw ascending that ladder to get to their working places ascended the ladder?

A. Yes, sir, that is a typical picture. That might apply to both ranges.

Q. To both ranges?

A. Yes, sir.

Q. Of course, that shows just the beginning of the ladder?

A. Yes, sir.

Q. After that man gets on up to the place where he is going to work, how does he get into the working place: is it all open there, or is there a hole he goes through, or what?

A. It is just like stepping into a hall in a building.

Q. How large is the opening he goes through? What I want to know—just tell us what it is.

A. The horizontal opening?

Q. Yes.

A. About four by four, I would say.

Q. About four by four?

A. About four feet.

Q. In other words, he has to go through a hole about four by four, taking the tools with him?

A. That is right.

Mr. Burr:
Off the record, just a minute. Judge, I have one other picture I must have left at the office I want to get later. It shows how they set their fuses.

The Court:
How they set their fuses?

Mr. Burr:
We will mark it later and give it an exhibit number.

The Clerk:
Exhibit Number 39.

(Thereupon Plaintiffs' Exhibit Number 39 was assigned to an exhibit to be later furnished.)

Mr. Burr:
Could I qualify him about it now?

The Court:
Yes, sir.

Mr. Burr:
He has seen it.

The Court:
Yes, sir.

Q. You have seen the picture I have reference to—
A. Yes, sir.
Q. —showing how they set the fuses in the face?
A. Yes, sir.
Q. That is a correct picture of how that is done in those mines?
A. Yes, sir.

Q. Generally, just a few general questions about the—are these mines up in these regions what you would call wet or dry mines?

A. On the Mesaba Range particularly they are what I would call wet mines, because they are very close to the surface and the top over the ore is nothing but gravel drift, which is sand and gravel, and naturally any water that falls on the ground reaches the mines, and they are very wet.

Q. Do the men have to wear special clothing?

A. In some places they wear oil skins, that is, rain-proof coats and hats and rubber boots.

Q. Comparing first—not comparing either, but I will ask you this: Those elevators that go down in the shafts, do they descend slowly or rapidly?

A. That would depend, of course, on the depth of the shaft.

Q. I mean how is the movement of the elevator; is it slow or fast, the ordinary movement of the elevator in the shaft carrying the men?

A. I don't know just what you mean by slow or fast. I would say it travels as fast as a high speed elevator in a tall building.

Q. That is what I wanted, to get some idea of it.

Now, do the men, when they get off the elevator at their working places, do they walk or ride from there to their actual places of work?

A. In most places they walk.

Q. What are the exceptional cases where they don't walk?

A. In one or two mines they ride in cars on the haulage level.

Q. On the haulage level?

A. Yes, sir.

Q. Is that exceptional or general?

A. I would say that is exceptional.

The Court:
Is that where the greater distances are?

The Witness:
That is where the greater distances are.

The Court:
Greater?

The Witness:
Yes, sir.

Q. Up there where they do walk,—I will ask it this way: Is the haulage system on the level there, on the drift, is that where that is?

A. Partially.

Q. Do the men walk along there?

A. The men walk along there, and then there is another haulage level which extends out in this direction.

Q. Yes.

A. So the procedure is to walk in here and then use this way into the rest when they go out in this direction.

Q. Then all the walking is where the tracks are?

A. Yes, sir.

Q. Just like we have it here?

A. That is right.

Q. Is the track on the level up there or is it undulating?

A. It is undulating. They probably have as much as 3 percent grade.

Q. In climbing up to the working place they use a ladder like anyone would use the rungs of a ladder?

A. Yes, sir.

Q. Just climb a ladder?

A. Yes, sir.

Q. That is what it is?

A. Yes, sir.

The Court:

I want to ask you this, Mr. Mitchell.

As a general proposition, the further down they go the greater the distance?

The Witness:

Yes, sir.

The Court:

Now, on the deepest levels where they have been extended the furtherest, do you have the motor carriage to carry the men?

The Witness:

Some mines make a practice of carrying the men and some do not, no matter what the distance. For instance, in the Montreal Mine we are talking about, they do not carry the men.

The Court:

They do not?

The Witness:

No, sir.

Q. Which would you say—is it the rule or exception that they carry them to the place where they climb the ladder?

A. I would say it is the exception.

Mr. Burr:

Now, if Your Honor please, I want to next ask him—

Q. Mr. Mitchell, are the same conditions you are talking about that existed on your trip up there in April, were they substantially similar conditions as when you

were at work,—when you were working up there, so far as the mines and the methods used are concerned?

A. Of course, I worked only on the Mesaba Range, and the conditions there are practically the same.

Q. While you were there in April, and these other two gentlemen there with you, did you make any inquiry from men working there and the management of the mines, whether or not the men's pay was on a portal to portal basis or on a face to face basis?

Mr. Harris:

We add the additional objection to that that it is clearly hearsay.

The Court:

I sustain the objection.

Mr. Burr:

We except and offer to show that investigation was made,—that is the only way he could testify, and that the reports of the men and the mine foremen and management—

The Court:

I think that is hearsay.

Mr. Burr:

I think some hearsay testimony is admissible, and I think this is one of those times.

I want to get an exception to it.

The Court:

All right.

Mr. Burr:

And as a result of that investigation he is prepared to testify from the investigation, and the reports of these

men it has been, since he has been familiar with it up there, on the face to face basis.

The Court:
Now, is that your offer of proof?

Mr. Burr:
Yes, sir.

Mr. Harris:
We object.

The Court:
Sustained.

Q. I will ask you now, Mr. Mitchell, while you were working there and when you went up there in April on this investigation trip, you and Mr. Baird and Mr. Thompson together, if you also inspected the open pit operations?
A. Yes, sir.
Q. Can you tell which is the largest open pit operation there is up there?
A. The pit known as the Hull-Rust is the largest pit.

Mr. Burr:
Will you please identify this next?

The Clerk:
Plaintiffs' Exhibit Number 40.

(Thereupon a map of the Hull-Rust pit was marked Plaintiffs' Exhibit No. 40.)

Q. Before asking you about the exhibit, Mr. Mitchell, will you please tell me the dimensions of that pit as to width and length and depth and how—

A. The pit is approximately two and a half to three miles long, about a mile wide, and perhaps 350 feet or a little better than that deep.

Mr. Harris:
May I—

Q. In that—

Mr. Harris:
May I call the attention of the Court—

Mr. Burr:
Yes, sir.

Mr. Harris:
—to the distinction between pit and underground mine? I want to remind the Court of that distinction.

The Court:
All right. I will overrule the objection. You have an exception to this line of testimony.

Mr. Harris:
All right, sir.

Q. What did you say was the name of that pit there?
A. The Hull-Rust.
Q. Does one company or several companies operate in that same pit?
A. Yes, sir, there are several mining companies that are operating in the same pit or same hole.
Q. What kind of machinery or equipment do they use —I will ask you this: The mining started at the surface, originally, did it not, or near the surface?
A. Yes, sir.

Q. About how near the surface did they strike that ore when they started it?

A. In the Hull-Rust Pit I think the ore was in about four feet of the surface.

Q. Four feet of the surface?

A. Yes, sir.

Q. As they take the ore out the pit gradually gets deeper?

A. Yes, sir.

Q. How do they take that ore out of the pit?

A. The ore is taken out by mechanical shovels.

Q. By what?

A. By mechanical shovels.

Q. What is the motive power, steam or electricity or what?

A. At the present time the large shovels are powered with electricity.

Q. As they go down, do they go straight down or is there left on the sides places for transportation to haul the ore, or anything of that sort?

A. There are benches left on the side where they put the tracks, standard railroad tracks, which carry the cars to transport the ore from the pit to the surface.

Q. Are those roads like on some of our high mountains, keep coming around—

A. That is right; they have to wind around.

Q. Have to wind around?

A. Yes, sir.

Q. Do you know whether they have reached the bottom of that ore now, or do you know whether the ore, by means of diamond drills, has been found to go further below the present bottom?

A. I couldn't answer that question directly, but I know they were working it in April when we were there. They hadn't reached the bottom.

Q. When the men are getting down—First, these electrical shovels we are talking about, what size crew does it take to operate one of those shovels?

A. Four or five men.

Q. About—do you know in a general way, the ore production of the Tennessee Company i.. all its ore mines on the mountain,—ore mines, I am asking about, on the mountain?

A. Yes, sir.

Q. Will one of those shovels get out as much as that or more—

The Court:
Mr. Burr,—

Mr. Burr:
Yes, sir.

The Court:
Unless it is shown the men dig and blast ore there like they do here in Alabama, I am not going into it.

Q. Do the men blast there?

A. They do some blasting?

The Court:
To any great extent?

The Witness:
Not as much as we do here.

The Court:
In fact, the shovels do most of the digging?

The Witness:
Yes, sir.

Mr. Harris:
We object.

The Court:
I sustain the objection.

Mr. Harris:
We move to exclude the testimony about all this open pit mining.

The Court:
Sustained.

Mr. Burr:
We except. We don't think that is any distinction at all when travel time is involved.

The Court:
It is a question bearing on conditions.

Mr. Burr:
No, sir, on the intent of Congress in passing this act. Congress said nothing about underground ore mines.

The Court:
It is a case of work done.

Mr. Burr:
That is true when you get to the individual workman. In this case the individual workman hasn't anything to do with it. However, I am just respectfully reserving my exception.

Mr. Harris:
It is understood we have—

Mr. Burr:

It is all an offer. The objection is sustained.

The Court:

You are objecting and I sustain the objection.

Mr. Harris:

Just so the witness doesn't offer anything.

Mr. Burr:

No. I am making it an offer of proof like I did yesterday.

The plaintiffs, separately and severally, offer to prove by this witness that at all times—that at the time he worked at these underground mines he was also engaged in the business of surveying in the pit mines and became familiar with them, and that on his trip back there in April he found substantially the same conditions as to methods of operations existing then as previously existed.

That the miners in traveling to and from their places of work have to get down to their working place, which are either steam shovels or such unit of work as they do, running a locomotive, or any unit of work that they do; that the operations are by electric shovels principally, and one or two or three or four,—sometimes a crew of as many as five employees operating one of these shovels produces as much iron ore in one day as the Tennessee Company can and does produce in all its iron ore mines in one day.

You mean with one shovel?

Mr. Burr:

Yes, sir, with one shovel.

The Court:

That is five men?

Mr. Burr:

That is five men, yes, sir.

That the iron ore produced from these open pit operations constitutes something over 85 percent of the total production of the iron ore of the United States.

That in these open pit mines in the Lake Superior District,—ore mines,—the miners reach their working places or unit of work where they actually begin producing ore, in various ways.

We offer to show in one of them operated by the Republic Steel Corporation, that in order to get to the bottom of the pit the company had sunk a shaft from the surface, and this shaft goes down several hundred—not several hundred feet, but about how many feet, for my own information?

The Witness:

About 200 feet.

Mr. Burr:

Goes down about 200 feet, and there has been driven from the bottom of the shaft a tunnel which runs into the pit and that tunnel is about how long?

The Witness:

Three or four hundred feet.

Mr. Burr:

Is three or four hundred feet, and that the employees of that particular mine get to their places of work by being let down the shaft in a cage and walking through the tunnel to where the tunnel strikes one of the benches of the pit, and then the pit has been extended below that bench, and they walk from that place on down to the working place, and that walk, when he was there in April, was—about how much?

The Witness:

About 400 feet.

Mr. Burr:

About 400 feet, and that those particular miners get to their places of work in that way.

That this is one of the large operations in this particular open pit.

That the miners of the other companies that operate in that same pit, and in other pits similar to it, get to their units of work at the bottom of the pit in various ways. Some of them, at their option, ride the trains that circle around the various ridges,—

The Witness:

Benches.

Mr. Burr:

Benches. —that is, the trains that haul the ore or empty cars; the majority of them either walk down to their working places by walking along the ridges or benches,—either that or they use steps which have been built from the rib down to the working places; that there were as many as 75 of these steps leading from the rim down to the bottom of the pit that the men climbed up and climbed down, and that after they get off these steps, which do not go all the way down to the bottom of the pit, they walk an additional distance by walking around the rims until they get to their working places; that that same condition has existed ever since he has been familiar with the mining business in that country, and that when the men get down to their work unit, the steam shovel or electric shovel or locomotive engine, that the men's pay begins, and is computed from the time they reach the working place, and there is not included any of the time in getting to or from their working places.

Mr. Harris:

On that particular phase we add the additional objection that knowledge on his part would be hearsay.

Mr. Burr:

He was there in 1919.

Mr. Harris:

1919 is twenty years ago.

Mr. Burr:

We will show it came on down all the time until now. That is one of the things I am offering to show, the same conditions existed back in 1919, and then he goes back there and finds conditions—

The Court:

That was before he came to Alabama?

Mr. Burr:

Yes, sir, and have been going on since they started the mines.

The Court:

How old is that mine?

The Witness:

About fifty-two or -three years old.

The Court:

To what extent had it been mined before you came to Alabama?

The Witness:

I expect it had been mined about fifty-percent, Your Honor. It was a very large pit when I was there.

Mr. Burr:

Now, we offer as a part of his testimony Plaintiffs' Exhibit 40, which is a correct map of the operations in this particular mine, the Hull-Rust open pit mine, and shows the different companies and different ownerships, and the different locations of those ownerships.

Mr. Harris:

That is to be marked for identification only?

Mr. Burr:

Mark it just like it is. I am offering it.

The Court sustains objection to it?

The Court:

Yes, sir, I sustain objection.

Mr. Harris:

I thought he was marking those for identification to distinguish between those that were in evidence and those that were not in evidence.

The Court:

Yes, sir.

Mr. Burr:

No, sir, I haven't done it that way, no.

The Court:

You are offering Exhibit Number 40?

Mr. Burr:

Yes, sir, and objection is sustained to it.

Mr. Harris:

That is right.

Mr. Burr:
I understand objection is sustained to all that?

The Court:
That is right.

Mr. Harris:
That is right.

Mr. Burr:
And we except, separately and severally.
Will you please mark these for me next? They are photographs.

The Clerk:
Plaintiffs' Exhibit No. 41.

The Court:
What is that, Mr. Burr?

Mr. Burr:
They are photographs of this mine. This will be 42, and this 43.

(Thereupon three photographs of the Hull-Rust open pit mine were marked for identification, respectively, Plaintiffs' Exhibits 41, 42 and 43.)

Mr. Burr:
We offer to prove by this witness that Exhibit Number 42 is a correct picture taken at the bottom of the pit mine, and that exhibit 41 is another picture taken at the bottom showing the—

The Court:
That is what?

Mr. Burr:

—bottom and a glimpse of the side.

The Court:

That is Exhibit 41?

Mr. Burr:

Yes, sir. Now 43, we offer, and we do not offer the printed description, but offer the photograph only,—this is cut out of a magazine,—as a correct picture view of the mine itself, a map of it, showing the location of some of the principal mines, and on the second page the steam shovel—the electric shovel in operation on the bottom of the pit, and the third picture showing the side of the pit and operations with the steam shovel.

Of course, we don't offer any of the printed matter.

The Court:

None of the printed matter?

Mr. Burr:

None of the printed matter describing it; just the actual pictures showing what it is.

Q. Now, when you were there in April, Mr. Mitchell, about—in your judgment—we are offering this too, Your Honor. Tell me.

(Thereupon Mr. Burr whispered with the witness.)

Mr. Burr:

We offer to prove by the witness that the length of the walk, the travel distance, that the man takes from the rim of the mine down to his working place will be as long a distance as a mile, and will consume as much as forty or fifty minutes going down or coming back.

The Witness:
Just one way.

Mr. Burr:
One way, and that varies to where the shortest distance would be—what?

The Witness:
The shortest distance would be—

Mr. Harris:
Now, we—

Mr. Burr:
Just for my information; just whisper it to me.

Mr. Harris:
It looks like he is getting in evidence I am objecting to.

Mr. Burr:
Nobody in the world is putting in evidence. The shortest distance—

The Court:
That is what you offer to prove?

Mr. Burr:
Yes, sir.
The shortest distance would be about five or ten minutes each way, and the distances would vary between those two—

The Court:
As the men walk?

Mr. Burr:
As the men walk down, yes, sir.

And that the offer—the offer also includes an offer to prove that similar conditions existed there when he was back the last time; that he found the same conditions that existed there when he was there the first time were there when he was back the last time, and he can testify from the physical conditions there in April that the same method had been used in carrying the mining on down further, and in transporting the men and ore, and that the distances the men had to be transported or walk in, and the ore had to be transported accumulated more each year.

Mr. All wants to ask him one question.

The Court:
Are you through?

Mr. Burr:
Yes, sir, I am through.

The Court:
It is understood that is objected to and objection sustained.

Yes, sir, and we make the same offer as to each plaintiff and each paragraph of the offer and the same kind of exception we have been taking all through.

The Court:
Yes, sir.

Mr. All:
Judge, this is to be as to underground mines.

The Court:
Yes, sir.

(By Mr. All):
Q. You said in April you made some investigations in two very large fields?

A. Yes, sir.

Q. Which ones?

A. Mesaba and Gogebic.

Q. You testified to methods which were employed by means of these levels and the shafts—.

A. Yes, sir.

Q. —at the time you observed it in April; is that right?

A. That is right.

Q. And I believe you stated the method of mining you observed in April was essentially the same as those you observed followed in those mines in ranges before you came to Alabama?

A. Yes, sir.

Q. What I want to ask you particularly, in the shaft mines where you observed the men in these lower levels, could you tell from watching that part that had been mined out of the upper levels, whether or not the same method of mining had been employed in mining out the upper levels?

A. I don't quite understand your question.

Q. Well, you go down, say, and observe how the current mining is being done in the 75th level.

A. Yes, sir.

Q. You see how that is being done.

A. Yes, sir.

Q. Did you observe the upper part of that mine?

A. No, sir.

Q. Did you see a—

The Court:

He says he did not examine it—

Mr. All:

He says he did not examine the inside of the mine.

Q. Did you go down this shaft?

A. Yes, sir.

Q. Could you see there were upper levels and upper entries to this thing?

A. No, sir, because you are practically enclosed in the cage.

Mr. All:

That is all.

Cross Examination.

(By Mr. Harris):

Q. Mr. Mitchell, the nature of this ore deposit in the shaft mines that you worked in and that you visited in April is not clear to me. Is that deposit a stratum of ore just uptilted, just as if you had taken a horizontal ore bench in Alabama and turned it up almost vertically, or is it an essentially different kind of ore?

A. You will have to qualify that question by confining it to the different ranges.

Q. Well, now, let's take the range that you visited and that you testified about. I am talking about not the pit mines but the shaft mines. Which ranges—name the ranges that you visited.

A. The Mesaba Range and the Gogebic.

Q. All right. Take the Mesaba range and tell us how that ore is actually deposited in the earth, what form and shape it is in.

A. I will have to use the board to explain it.

Q. All right.

A. These are what we call lenticular deposits.

Q. Lenticular?

A. Yes, sir. In other words, they have a greater horizontal dimension compared with the vertical dimension. For instance, in this Hull-Rust pit—

Q. I am not talking about the pits.

A. The pits and the underground deposits are the same. These pits may have an extent of three or four miles this

way and a mile this way with a depth of about three or four hundred feet. The only thing that determines whether you shall mine that by underground method or open pit method is the thickness of the cover up here. If you have the top not very thick, as in the case of the Hull-Rust, you would mine it by open pit method.

If you have a good deposit here with the cover 100 or more feet thick, then you would sink a shaft and then drive out this way with your haulage ways or levels.

Q. When you sink this shaft, that is just a straight, vertical shaft like the elevator in a New York skyscraper, isn't it?

A. Yes, sir.

Q. Like an elevator shaft?

A. Yes, sir.

Q. When you spoke about a cage going down with the speed of an elevator, you meant the speed of an elevator that goes to the thirtieth or fortieth floor in a tall building, and not the local elevator?

A. Yes, sir.

Q. Now, when you sink your shaft and start out on the horizontal to get to your ore bed, that doesn't try—that drift doesn't try to follow—the miners don't try to make it follow any ore bed itself, but that is purely a passage way to get to the ore bed, isn't it?

A. That is correct.

Q. And, therefore, that passage way is uniformly level, isn't it?

A. It may be level or it may be on a slight grade.

Q. Not more than a three-percent pitch one way or the other? Now, how close do you start digging that vertical shaft to the edge of the ore deposit?

A. That would depend on the geological conditions or the condition of the foot wall. The approximate figure would be a couple of hundred feet, I would say.

Q. All you are really doing is to leave enough pillar in there between the shaft and the ore bed for that pillar to protect your vertical shaft, isn't it?

A. That is correct.

Q. So you would start off underground at a distance of 100 or 200 feet from the ore itself?

A. That is right.

Q. And when you sink your shaft, do you have all 35 levels being mined at one and the same time, or do you mine the tops levels, and when you get them mined out, go out with the lower drifts?

A. That is correct; it is a progressive system.

Q. It is a progressive system?

A. Yes, sir.

Q. So that, in the beginning, when they start, the only distance that a miner in that sort of mine would have to travel to get to his ore deposit would be from 100 to 200 feet?

A. That is true of that drift, but he may have to go farther this way.

Q. That is correct; that is to say, to get to the ore deposit?

A. That is correct.

Q. Now, if we use this book as an illustration of the ore deposit. They come in here, and that is the drift leading to it?

A. Let's put the book this way and it would be correct.

Q. Then they, when they hit the book—the ore deposit, they go out in a horizontal direction?

A. That is right.

Q. Just as if they were going to mine out this book here standing this way?

A. That is right.

Q. And the deepest mine you knew anything about up there was the Montreal mine, wasn't it?

A. That was the deepest one I visited.

Q. And that was only down 3500 feet approximately?

A. 3500 feet.

Q. To ride that 3500 feet on those high speed elevators, wouldn't take two minutes, would it?

A. Takes approximately three minutes, I think.

Q. And the ore deposit itself being practically vertical, the distance from your landing place on the 35th level out to the ore deposit, would be approximately how many feet in the deepest one you visited?

A. Four or five hundred feet.

Mr. Burr:

I didn't get that answer.

Mr. Harris:

Four or five hundred feet.

Q. Now, the—what other mine of vertical shaft of that nature did you visit up there? You say you visited the Montreal?

A. Geneva.

Q. What?

A. The Geneva mine.

Q. And how deep had that gone down?

A. That was 3400 feet.

Q. And the distance from the 34th level over to the ore deposit was in that, I assume, four or five hundred feet?

A. Approximately the same.

Q. And then what other mine did you visit of a vertical shaft nature?

A. The Godfrey mine on the Mesaba Range.

Q. And what level had it reached?

A. It is a one-level mine approximately 230 feet from the surface.

Q. Well, that has a vertical shaft?

A. Yes, sir.

Q. 200 feet deep, and so in that mine all the ride in the elevator is about 200 feet?

A. 230 feet.

Q. Then they only have to walk about 230 feet, something like that, to get to the ore bed, don't they?

A. Approximately that, yes, sir.

Q. In none of those vertical mines, vertical shafts that you went, did you find any greater distances from the shaft to the ore bed than 500 feet, did you?

A. No, sir.

Q. Now, are those—any of those vertical mines, if I may use that phrase, or shaft mines, owned by the United States Steel Corporation or any subsidiary of the United States Steel Corporation?

Mr. Burr:

We want to note an exception to that question.

Mr. Harris:

The reason I am bringing that in—

Mr. Burr:

I just want the objection.

Mr. Harris:

I just want to explain to the Court—

The Court:

Go ahead.

Mr. Harris:

The reason I am bringing that in, Mr. Burr, on some days—the days are all run together in my mind and I can't remember the exact day—presented evidence of the

competitive situation between the mines here in this district and mines elsewhere.

I propose to show on these mines this gentleman has visited the same ownership obtains as obtains to these plaintiffs.

Mr. Burr:

If Your Honor please, until he made that statement I didn't state my grounds of objection.

The competition I have talked about is not the kind of competition he is talking about.

The kind of competition he is talking about, I don't think it is material in this case.

The Court:

I overrule the objection and will let you all argue that to the Court.

Mr. Burr:

Argue that to the Court. That is a good way to handle it, I think.

I would like to state my position on the matter.

Some of the stiffest competition the Tennessee Company has—we are not interested in the Tennessee Company right now—is with the subsidiaries of the United States Steel Corporation.

Mr. Harris:

The Court says you may answer the question.

Will you read the question?

(Thereupon the question last propounded was read as above recorded.)

A. Yes, sir.

Q. Which one of those shaft mines you visited was owned by the United States Steel Corporation or a subsidiary?

Mr. Burr:

Your Honor understands we have the same objection?

The Court:

Yes, sir; same ruling.

A. The Godfrey mine.

Q. What?

A. The Godfrey mine.

Q. The Oliver Iron Company, is that a shaft mine or pit mine?

A. The Oliver Iron Mining Company is a mining company. They have both open pit and underground mines.

Q. Did you visit any of the mines of the Oliver Mining Company?

A. The Godfrey mine is one of the mines of the Oliver Mining Company.

Q. And the Oliver Mining Company is a subsidiary of the United States Steel Corporation?

A. That is correct.

Q. Now, were any of those shaft mines you visited operated by the Republic Steel Corporation or Republic Corporation or a subsidiary of it?

A. We did not go underground in any Republic mine.

Q. Well, whether you went underground or not, are there mines up in that region which are operated by the Republic Company?

A. Yes, sir.

Q. Do you know the names of the mines, the shaft mines operated by Republic up there?

A. The Susquehana Mine, which is a combination open pit and shaft mine on the Mesaba Range.

Q. Any others?

A. They have some mines in the Gogebic district also, the Palms,—Angles, I believe, was one of them.

Q. Was the mine you worked for twenty years or more ago—was it at that time or is it now owned by a subsidiary of the United States Steel Corporation?

A. No, sir.

Q. When you were with the mine you worked for—it was a shaft mine, Cleveland-Cliffs Iron Company?

A. The Cleveland-Cliffs Iron Company have the same relations as the Oliver Mining Company. They have several mines, both open pit and underground mines.

Q. And you worked in the underground mine?

A. The mine I happened to be connected with was a combination mine, open pit and shaft.

Q. And the men in the shaft mine—in that mine had their lunch on the company's time, didn't they?

A. I can't answer definitely on that.

Q. Can't tell about that? Well, now, you know—Well, did you know whether or not the Cleveland-Cliffs Mining Company was owned jointly by a member of the big iron or steel companies?

Mr. Burr:

We object to that question along with his other questions just for the same reason.

The Court:

Overruled.

Mr. Burr:

All right, sir. We except.

A. As far as I know at that time Cleveland-Cliffs was an independent company.

Q. How about now?

A. Now, I think they are more or less connected with the Republic Steel Corporation.

Q. All right.

Mr. Burr:

In addition to our objection, we move to exclude his answer because he says he thinks. He doesn't know. He couldn't know to save his life.

Q. Now, then, Mr.—

Mr. Burr:

Wait a minute. I want this ruled on.

The Court:

Did you say you think or you know?

The Witness:

I say I think so. I don't necessarily know.

The Court:

Sustain the objection.

Q. Well, is the Cleveland-Cliffs Iron Company generally reputed to be an affiliate or subsidiary of the Republic Company?

Mr. Burr:

Same objection to that question if the Court please. I don't think we are trying any anti-monopoly case.

Mr. Harris:

I am not trying an anti-monopoly case. It is something he brought in.

The Court:

Sustain the objection.

Mr. Burr:

It is on the operation of the mines up there. I don't know whether it is owned by Tom, Dick or Harry.

The Court:
Sustain the objection.

Q. How far does the ore from those vertical shafts have to be transported by railroad after it leaves the mouth of the mine before it gets to a water haul?

A. Water haul, was that the last word?

Q. Yes, the last word was a water haul or boat transportation.

Mr. Burr:
We object to that question too.

The Court:
Overruled.

Mr. Burr:
We except

A. The ore from the Mesaba Range is transported to the ports of Duluth, Minnesota, or Superior, Wisconsin.

Q. How far is that?

A. I don't know the exact distance; about sixty miles.

Q. When it gets there is it transhipped to boat?

A. It is placed in boats.

Mr. Burr:
Your Honor understands I have an objection to these questions.

The Court:
Overruled.

Mr. Burr:
That is a good deal further off than a coal mine in Alabama, I think.

Q. After it gets to the boat, how far is the water haul?

A. That would depend on whether it was going to the Chicago District or Cleveland District.

Q. Or Pittsburgh District?

A. Yes, sir; that is Cleveland.

Q. Well, how far is that water haul, say, to the Chicago district?

A. Anything I say would be guess work.

Q. You have traveled up in that region, haven't you?

A. Yes, sir.

Q. You have a judgment, don't you, Mr. Mitchell?

A. I would say about a thousand miles.

Q. All right. How far is it to Cleveland?

A. About 1200.

Q. And how far is the water haul on the ore going to Pittsburgh.

A. Going to Pittsburgh, it would have to go to some Lake Erie port, which would be about the same distance as the Cleveland ore.

Q. The Cleveland ore, does that have another railroad haulage after the boat haulage?

A. Yes, sir.

Q. How far is the railroad haulage at the other end, the Cleveland end?

A. Approximately a hundred miles You are talking about the Cleveland District now?

Q. All right. That is close enough. And how far is the railroad haulage at the Pittsburgh end?

A. About 150 miles.

Q. Is there any railroad haulage of a substantial nature at the Chicago end?

A. That is practically on the Lake shore.

The Court:

We will take a few minutes recess.

(Thereupon proceedings were in recess from 10:40 A. M., to 10:55 A. M., at which time proceedings were resumed as follows:)

Mr. Harris:
Shall I—

The Court:
Proceed.

Q. Mr. Mitchell, you are in the engineering department, aren't you?

A. Yes, sir.

Q. In the engineering work do you make surveys of the mines or is that done under your supervision, or does your work touch only one mine of the Tennessee Company?

A. That is done under my supervision.

Q. Are all the mines of the Tennessee Company under your engineering supervision?

A. No; just the mines at the Wenonah Division.

Q. At the Wenonah Division?

A. Yes, sir.

Q. As I understood those vertical shafts you testified about, two of them, one down to 3500 feet vertically and the other 3400 feet vertically—

A. That is right.

Q. How thick is the thickest top on the mines at Wenonah over which you have engineering supervision?

A. About 1500 feet.

Q. Have they made test drills of that cover? Have the Tennessee Company made test drills of that cover?

A. It has been diamond drilled, yes, sir.

Q. Is there anything in the geological formation of the cover or the ore deposits here that would make impossible the sinking of a vertical shaft here?

A. No, I don't know of anything.

Q. And what company or companies in this district have already sunk vertical shafts?

A. The Woodward Iron Company.

Q. How many vertical shafts have they got?

A. They have two.

Q. Now, do you know anything about how far the fluxing material has to be transported that goes into the shaft ore at Cleveland, at Chicago and at Pittsburgh?

Mr. Burr:

We want an objection noted to that line of questions, Your Honor, as having nothing to do with this case.

The Court:

Overruled.

Mr. Burr:

We except.

A. I don't believe I can give you any very good idea about that.

Q. Well, do you know anything about blast furnace operations at all?

A. I know the chemical procedure, yes.

Q. And you do know that the ore from the vertical shafts you have talked about is not a self-fluxing ore, do you not?

A. No, it is not self-fluxing.

Q. And the materials to make it flux have to be brought to the furnaces and mixed with the ore?

A. That is correct.

Q. Do you have any idea where that material is obtained even though you do not know the number of miles? Where do they get it?

A. I am afraid any testimony I might give on that would be purely a guess.

The Court:
Mr. Burr, anything in rebuttal?

Mr. Burr:
Yes, sir.

The Court:
He is through.

Re-Direct Examination.

(By Mr. Burr):
Q. Mr. Mitchell,—

Mr. Burr:
I am asking my questions on rebuttal without waiving my objection, of course, to the testimony that has been elicited.

The Court:
Go ahead.

Q. You testified in answer to the questions of Mr. Harris concerning transportation by boat and so forth from the Lake Superior District to the Manufacturing Plants of various companies, and you also testified as to the chemical situation that exists in reference to the ore up there requiring fluxing.

Will you tell us how many tons of that ore it takes to make a ton of pig iron, and how many tons of ore mined out here at Wenonah and Muscoda and Ishkooda it takes to make a ton of pig iron?

A. Roughly, it would take two tons of the Lake Superior ore to make a ton of pig iron, and three tons of the Alabama ore.

Q. I see. I believe you have already testified that the ore in the Lake Superior Region lies in these pockets, I would call them.

A. Lenticular deposits is the right word for it.

Q. And where they are close enough to the surface—they are handled by steam shovels or electric shovels?

A. That is right.

Q. Can a five man crew with an electric shovel handle as much ore—

Mr. Harris:
We have objection—

Q. —in one day as all the mines of the Tennessee Company?

Mr. Harris:
We have an objection to anything about pit operations.

Mr. Burr:
He has asked about pit ore being carried by boats.

Mr. Harris:
I didn't ask anything about pit ore.

The Court:
Sustain the objection.

Mr. Burr:
We offer to show in answer to the testimony he brought out, that the same ore that is transported by boat that was testified about on cross examination, that in the mining of that ore three men can, in one day, mine as much ore as the 5,000 miners in the ore mines in Alabama can mine in one day.

Mr. Harris:
We object to that.

The Court:
The testimony is confined to underground mines.

Mr. Burr:
That is my offer, Your Honor.

The Court:
Sustain the objection.

Mr. Burr:
I couldn't separate—

The Court:
Sustained.

Mr. Burr:
Except.

Q. I will ask you this question: Do you know what the proportion of the ore that comes out of the Lake Superior District mined in underground mines and pits is?

Mr. Harris:
We object to that,—Any comparison between shaft and pit ore. That has nothing to do with this case.

The Court:
Sustained.

Mr. Burr:
We except.

The Court:
I will permit you to show the amount of ore mined.

Mr. Burr:

That is in government publications we will have in a few minutes.

Q. Take the Godfrey mine,—that mine, you say, is owned by the Oliver Company?

A. Yes, sir.

Q. That is the one, you say, that has one level?

A. Yes, sir.

Q. It has only one level before it gets to this ore, and then they mine the ore by the method you have described, going almost laterally with the ore bed, and then coming up steps?

A. In that case there are no steps because it is all on one level.

Q. Then there are no steps in this particular case?

A. No, sir.

Q. That mine is owned by whom?

A. The Oliver Mining Company.

Q. In that particular case the Oliver Mining Company mines that ore with the miners having to travel only the two or three hundred feet down the shaft, and then walking the amount of distance—how far was it?—to the ore bed?

A. I think we are getting a little confused because you are using a diagram of the Gogebic Range illustrating a Mesaba Range Mine.

Q. Doesn't that illustrate it?

A. It would, if you could cut over this pitch of the ore.

Q. In the Godfrey Mine the miners come down this shaft how far?

A. 230 feet.

Q. Then they walk up this drift or level?

A. Yes, sir.

Q. When the mine first started it started when they struck the ore pocket?

A. That is right.
Q. The distance was shorter?
A. Yes, sir.
Q. And the distance kept growing greater?
A. Yes, sir, that is right.
Q. Until now it is a maximum of how much?
A. 17 or 18 hundred feet.
Q. Now, I believe you said the Montreal Mine—is that the one he asked you about?
A. Yes, sir.
Q. That has thirty-five levels?
A. Yes, sir.
Q. The Montreal Mine is owned by what company?
A. Overby-Norton Company.
Q. Overby-Norton Company?
A. Yes, sir.
Q. So, in that mine, when you were up there in April, the miners had to come down the shaft how far?
A. 3500 feet.
Q. And then they had to walk how far?
A. Four or five hundred feet until they struck the ore body.
Q. Until they struck the ore body, and then they had to go laterally to where their working places were?
A. Yes, sir.
Q. And then after that they had to climb the raises to their working places?
A. Yes, sir.

The Court:
Mr. Burr, you have been over that.

Mr. Burr:
No, sir.

Q. This is in the Montreal Mine?
A. Yes, sir.

Q. How far do they walk after they climb up to their working places?

A. Practically right at it.

Mr. Harris:

And go through the four-foot hole?

The Witness:

Yes, sir.

The Court:

We have been over that.

Q. Now, Mr. Mitchell, you were asked about the stock ownership or control of various companies up there.

Has the Sloss Company got any subsidiary up therein that country you know anything about?

A. Not that I know anything about.

Q. Has the Woodward Company got any subsidiaries up there?

A. Not that I know of.

Q. Do you know the Oliver is a subsidiary of the United States Steel Corporation?

A. Yes, sir.

Q. Do you know the Republic has any subsidiaries up there?

A. The Republic Corporation does mine ore. I think it is the parent company.

Q. Is the Republic Company that operates up there—I am offering to prove this,—is that the company up there that operates in the open pit—

Mr. Harris:

We object.

Mr. Burr:

I said I was offering to prove this—

Q. —by means of a shaft driven down and then by a tunnel over to the pit?

Mr. Harris:
We object.

The Court:
I don't understand your question.

Mr. Burr:
I offered to prove the operations of one company up there in the open pit operation which got its men to their working places by means of a shaft driven down and a tunnel, and I am offering to prove now that is the Republic Company.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
That is an offer to prove, and we except.

The Court:
All right.

Mr. Burr:
I think that is all, Your Honor. Just one minute.

(By Mr. Burr):
Q. The shaft mines you spoke of in this district, how many of them did you say were in operation in this district?
A. There are none in operation.
Q. There are none in operation?

A. Two vertical shafts, however.

Q. Where are those vertical shafts you mentioned located, and who do they belong to?

A. They both belong to the Woodward Iron Company.

Q. Where are they?

A. One is at the Sango Mine.

Q. Do you know how long since that mine has been in operation?

A. I can't say exactly. I think it is about twenty-four or twenty-five.

Q. Where is the other?

A. The other is called the Pyne Shaft. It is not an operating mine but simply a shaft.

Q. Has it ever been an operating mine in your knowledge?

A. There are only two that I know of.

Q. Well, since you have been here did the Gulf States Steel Company, which has been absorbed by Republic, operate a shaft mine over in the valley?

A. It operated an inclined shaft.

Q. How long since that has been in operation?

A. I expect it shut down about '31 or '32.

Q. Not operating now, is it?

A. No, sir.

Q. Now, as a mining engineer, Mr. Mitchell, familiar with these mines on Red Mountain that operate with the slope method, and knowing the pitch and slope of the ore, and the conditions, which is the most practical way to operate those mines, by the present method or putting down shafts?

Mr. Harris:

We object; calling for an unauthorized conclusion and speculation.

The Court:

Overruled.

Q. Answer it.

A. At the present time I would say the slope operation is the most economical.

Q. Is sinking a shaft—they don't just grow there; you have to put them down, don't you?

A. Yes, sir.

Q. Is it expensive or inexpensive?

A. Yes, it is expensive.

Q. We had no shaft mine operating in this district at the time of the passage—since October 24, 1938, have we?

A. No, sir.

Mr. Burr:

That is all.

Re-Cross Examination.

(By Mr. Harris):

Q. As I understand, it is your opinion that on a collar to collar basis it is more economical for the company to pay for the time consumed in going the entire distance from the mouth back as much as a mile or two miles in the slope system now than it would be to use a vertical shaft system?

Mr. Burr:

I object to that question.

Mr. Harris:

I want to know if he is basing it—

Mr. Burr:

I want my objection to it.

The Court:

Overruled.

Mr. Burr:

And an exception.

A. That would be rather hard to answer off hand. I would have to make a study of it.

Q. You told Mr. Burr in your opinion it was more practicable and economical to use the slope method than to sink a shaft?

A. At the present time, yes, sir.

Q. Now, when you say that are you taking into account the payment of the collar to collar basis?

A. I will have to confess the portal to portal rule did not enter my mind in that light.

Mr. Burr:

Neither did I include it in the question; it hasn't got a thing in the world to do with it.

A. You would have to make a very careful study on that.

Q. So, your opinion on that, on reflection, you wouldn't consider it worth anything whatever?

A. In the light of the collar to collar ruling, it would porbably have to be revised.

Q. Under all the circumstances, your opinion you just gave Mr. Burr, as an engineer, and to the Court, you would consider it valueless?

A. No, I wouldn't say that.

Mr. Harris:

That is all.

The Court:

Is that all.

Mr. Burr:

What I asked you, Mr. Mitchell, and I will ask you again if you didn't understand—

The Court:
I heard it.

Mr. Burr:
All right.

The Court:
It is plain.

Mr. Burr:
That is all.

The Court:
Come down.

(Witness excused.)

The Court:
Who will you have?

Mr. Burr:
I was asked to prepare these showings. There they are.

The Court:
They will have to have time to see them.

Mr. Harris:
Yes, sir, I want to see them. I want very much to see them before my case starts. I thought I was to have them this morning. I was at my office at twenty minutes of eight.

Mr. Burr:
Judge, I worked last night and got to my office before eight o'clock this morning. I am perfectly willing for him to have all the time he wants, but if he is criticising me—

Mr. Harris:
I am not criticising you.

The Court:
How long will it take to check this?

Mr. Harris:
I don't know.

The Court:
Will thirty minutes do?

Mr. Harris:
Yes, sir.

The Court:
Have you anything else?

Mr. Burr:
I have this documentary evidence.

Mr. Harris:
Well, maybe the documentary evidence will take up to thirty minutes of noon. If this documentary evidence is offered, it might take him until a half hour before adjourning time. Then, I will wait.

The Court:
It is a quarter after 11:00 now.

(The showings referred to are as follows:)

2224 J. F. VANCE, if present and sworn as a witness, would testify as follows:

Until I recently reached the retirement age I held the position with the Tennessee Company of Manager of In-

dustrial Relations. I became Manager of Industrial Relations in the year 1933 and continued to serve in this capacity until the end of September, 1940, and since this time have served as Assistant to the President in an advisory capacity in connection with employee relationships. Previous to becoming Manager of Industrial Relations I had served for approximately 17 years as Manager of the Employment Bureau, and previous to this had served for many years in the transportation and other departments of the Tennessee Company. My service with the Tennessee Company aggregates about 46 years.

During this entire time it has been a part of my duties to know the relationships existing between the company and its men, the methods of employment, the handling of complaints and grievances and the negotiation and fixing of wage scales and of all working contracts. I have had charge of and set in the conferences with the committees representing the Smelters Union, the Brotherhood (American Federation of Labor Union), the employees' representatives and groups and individual employees. I am familiar with the contracts which have been negotiated and signed with all these unions.

The contracts which have been offered in evidence during the testimony of Mr. Ball and identified as T. C. I. Exhibits ..... are the contracts which we have actually signed with unions or committees representing unions, and constitute all the contracts with the exception of contracts which I now identify as T. C. I. Exhibits ..... These contracts are the original contracts signed by the authorized representatives of the Union and by the authorized representatives of the Company. T. C. I. Exhibit ..... followed meetings which we held in the City of New York, attended by myself and other representatives of the Company and by Mr. Reid Robinson, International President of the Smelters Union and other authorized representatives of

this Union and of the Locals of this Union at Muscoda, Wenonah and Ishkooda.

The making of this contract was a part of a settlement which was made by the Tennessee Company and the International Union and its locals of charges that were then pending before the National Labor Relations Board. These charges involved the claim on the part of the Union that approximately 172 members of their Union had been improperly and discriminatorily discharged by the Company and were entitled to reinstatement and payment of back wages. At this conference the Company agreed to pay in settlement of these claims approximately $102,650.00 and to give re-employment to 138 of these people, and as a part of this same agreement the Union and its locals and the company agreed to enter into a written working agreement. The Exhibit T. C. I. No. ..... is the agreement which was thus agreed upon and was executed by the parties, this being substantially agreed upon at conferences held in New York and Chicago and then being agreed upon in final form and executed in Birmingham by the parties whose signatures appear upon the paper.

During all these negotiations none of the union representatives at any time requested or suggested that the workday be changed from the existing practice of working place to working place, and the stipulation in reference to what the workingday should consist of was discussed and agreed upon as a part of the agreement reached and was incorporated in the contract as signed.

I took part in the negotiations that preceded the making of all the other contracts which have been introduced in evidence, and I also took part in all negotiations which were held since 1933 where any question of labor relations, increase of wages, wage scales and matters of this kind came under consideration for the ore mines of the Tennessee Company.

I identify T. C. I. Exhibits No. 5, 6 and 7, which have been offered in evidence during the testimony of Mr. Ball.

I was present at the time the Union presented first in October, 1933, their verbal request containing six suggestions or demands. T. C. I. Exhibit No. 5 is a correct statement of these six requests made at this time, and T. C. I. Exhibit No. 7 is a correct statement of the reply that the President of the Company made to these requests.

I am also familiar with the demand presented on or about April 13, 1934, by defendant Van D. Jones and others, representing the Smelters Union, containing twenty-two request and which has been identified as T. C. I. Exhibit No. 6. The response of the President of the Company to this request is correctly stated in the written paper which has been identifled as T. C. I. Exhibit No. 7.

I was present at all the other meetings relating to industrial relations which have been testified to by Mr. Ball and the statements made by Mr. Ball with reference to these meetings are true.

With the exception of these written documents (T. C. I. Exhibits 5, 6 and 7) and this occurred, as I recall it, on only three occasions, no committee of any union or representing any of our employees has ever presented a suggestion, request or demand that any portion of the time spent in going to and from the working place should be part of the day's work and should be compensated for. On these occasions, while the request of payment of half of the traveling time was made, it was never insisted upon by those presenting the request, and was never brought up for discussion or discussed.

The Tennessee Company has, during the entire period of time that I have been connected with it, paid its underground employees, and its underground employees have accepted payment on the basis of time computed on the workingplace to workingplace plan, each one of the employees signing receipts therefor at each of the pay periods similar to T. C. I. Exhibits Nos. Y and V, and have accepted full settlement of their claims on this basis.

I know that following negotiations between the representatives of the Unions and the Company, in which I participated, a number of increases in wages have been granted, and these increases were all made and accepted and paid to the employees on the basis of working place to working place, and with the authorized committees of the Union expressly agreeing. These increases in wages would not have been given unless wages had been agreed to by the Unions to be computed and paid on the working place basis.

I know that the incentive plan was based on wages computed on the working place to working place basis, and know that every wage scale for the time I had charge of these matters until May 1, 1941, was based on the work- to by the Unions to be computed and paid on the working ing place to working place plan.

I identify T. C. I. Exhibits Nos. .....and ..... These contracts are the original contracts signed by the authorized representatives of the respective unions and by the authorized representatives of the Company.

In performing the duties of my position it has been necessary for me to become familiar and I have become familiar and known of the customs and practices in the other iron ore mines in Alabama, as well as in Minnesota and other sections of the United States, and I know that on October 24, 1938, and for many years previous the iron ore operations of the United States and in the various parts of the United States all computed and paid the wages of the underground employees on the working place to working place basis, and that they did not pay anything for the time spent in going to and from the working places.

The time spent in going to and from the working places varies in different mines in Alabama and also varies in different mines throughout the United States.

2229 GEORGE B. NEAL, if present and sworn as a witness, would testify as follows:

My name is George B. Neal.

After finishing school I worked from 1907 until, 1932 in the brown ore mines of the Tennessee Company located at Greeley in Tuscaloosa County, and at Champion, located in Blount County, Alabama. I first started to work in the mines at sixteen years of age, and my first job was that of repair crewman. From that time on I have done about everything there is to be done in an ore mine, having run steam shovels, tenders, worked on repair crews, walking boss, ore inspector, assistant superintendent and superintendent. Some of the places that I worked at during my earlier experience were open pit mines. This is true of the ore mines at Greeley and Champion and the dolomite quarry of the Tennessee Company at Ketona.

In the open pit mines the men all worked on an hourly basis and their work time began when they actually commenced work at the place of production. The computation and payment of time was referred to as being when the men were "on their shovels" or unit of work. Some of these Alabama pits were deep and the men would have to walk to their shovels or unit of work, for instance, the locomotive or drills on the wall. This walking distance would consume approximately ten minutes; that is, ten minutes going and ten minutes returning.

My entire mine experience has been with the Tennessee Company. I became ore inspector for all the red ore mines of the company in 1922 and continued as ore inspector until December, 1923. During this time I inspected all the mines in all the Divisions of the Company and was in the mines from three to four times a week, being in some one of them nearly every day. In inspecting these ore mines I became familiar with the methods of operations and the conditions that existed in the mines. I became Superintendent of the Wenonah Division in January, 1924, and have continued as Superintendent until the present time.

When I first began working in the ore mines on Red Mountain the bath house charge was fifty cents, and this charge continued up until 1932, and was a voluntary payment on the part of the men; that is, the men were not required to bathe in the bath house but could bathe where they pleased. Some of them bathed at home.

The practice as to carbide in the mines has been practically the same ever since I have been connected with the iron ore mines. The men have always bought their carbide, and they would buy a supply which would last from two to three days. As a usual thing the men buy the carbide at the tally house where the Company keeps it and sells it for cost. It can be purchased cheaper there than elsewhere. When the miner puts his empty carbide can in at the window at the tally house a full can of carbide is given to him and it is charged up to him according to his name and badge number and it is cut through the pay roll. Obtaining the carbide takes only a fraction of a minute. There has not been in the past and is not now any crowding or delaying of the men at Wenonah because of having to get carbide.

The underground miners and underground workers have never been required to get tools on the surface at Wenonah. I do not know of any miners bringing tools into the mines for their own convenience. Tools originate at the outside supply house. On requisitions from the mine foreman they are sent by the surface crews from the supply house to the yard at the entrance of the mine by truck. From this place they are taken into the mines by underground service crews.

The witness would further testify that he has read the testimony of E. C. Scott and that the testimony of Mr. Scott as to methods and practices of the underground workers is true.

During the time I have been superintendent at Wenonah it has been my duty to take part in and I have taken part

in all the meetings which have been held with the union committees (either Smelters Union or Brotherhood of A. F. of L. Union) at Wenonah concerning their complaints, grievances and requests relating to the Wenonah Division.

In addition to this I have attended most of the meetings held in Mr. Bell's office with the general committees of the unions above referred to in reference to requests, grievences and complaints covering the entire iron ore operations, these meetings have been held regularly since the year 1932 with the Smelters and since 1934 with the Brotherhood, the predecessor of the American Federation of Labor Union.

I have never heard any committee of any of these unions or any representative of any of these unions present at any time any request or complaint or suggestion that the time spent in traveling from the entrance of the mine to the place of work and return should be included as a part of the day's work or be in any way compensated for.

The computation of the time and payment of the men have always been on the working place to working place basis, and they have never received any pay for the time spent in traveling. I know that this has been the universal custom and practice in all the mines of the Tennessee Company since I have been connected with them.

In 1935 I was sent by the Company to inspect and learn the methods and practices used in the iron ore mines in Minnesota, Michigan and Wisconsin, and I visited and inspected iron ore mines in these states, went into the workings and saw the men at work. I know that at this time all of the underground miners were paid in all these mines on the working place to working place basis, and that none of them received any pay for time spent in going to and from their working places. At this same time I also inspected and went into the open pit operations in the State of Minnesota. These operations, one of them known as the Hull-Rust, are very large and very deep pits,—the largest in the world. Several companies have operations

in this same big, open mouth pit. The operations are principally by electric shovels and one or two employees operating one of these shovels can produce and did produce while I was there as much iron ore in one day as the Tennessee Company can and does produce in all its iron ore mines in a day.

In this open pit mine the miners at this time reached the working places where they worked in actually producing ore at the electric shovel or other units in various ways. In one of these mines, operated by the Republic Company, which is located in the corner of the pit, a shaft has been driven some distance from the mouth of the pit and a tunnel made from the bottom of the shaft opening out into the pit where the Republic Company's ore was located. The miners working in this operation would go down the shaft on the cage and then walk through the tunnel into the open pit. At one time the place of work was on the same grade as the tunnel, but the work had been extended deeper so that it was some distance from the entrance of the tunnel and the men who used the tunnel would walk down a stairway, or follow switch tracks bringing them eventually to their unit of work. In this same mine other miners of the Republic Company and of other companies walked from the rim of the pit down to the working places in the bottom of the pit. In some instances they use stairways or steps which have been built down from the rim of the pit, and in some instances they ride cars part of the way and walk down steps the balance of the way.

As I have testified there are various ways for the miners in these open pit mines to get to their working places. They are in this particular open pit mine required to go different distances, some as far as half mile or more. The pit is about three miles long, about a mile wide, and about 340 feet deep. I found that there had been built, going from the rim of the pit, down into the pit, as many as seventy-five stairways which were in general use by the men in going to and from their working places.

The workday of the employees in these open pits is computed and they are paid from the time they reach their electrical shovel or their unit of work until the time they leave it, and they do not and did not receive any pay for any of the time spent in traveling to and from their working places.

All underground employees in the Wenonah Mines of the Tennessee Company have always been on an hourly basis and their wages computed and paid on this basis and on the basis of an occupational wage for each job.

Mr. Burr:

Now, shall I proceed with this documentary evidence?

The Court:

Yes.

Mr. Burr:

We offer first, if Your Honor please, the government publication, United States Department of the Interior, Bureau of Mines, Iron Ore, Pig Iron, Ferro-Alloys and Steel, which is covered by the pre-trial order and gives the government figures on the production of iron ore on pages 528, 542, 548, 549, 550, 551, 552, 553 and 554.

Mr. Harris:

And I, for my client, object to any figures dealing with production of iron ore outside of the Birmingham district, if the Court pleases.

The Court:

Does that include all districts, Mr. Burr?

Mr. Burr:

Yes, sir. That is similar to the one already in evidence. It is different pages,—different years.

Mr. Harris:
On the further ground we haven't seen it—

The Court:
I will admit it.

Mr. Harris:
Where it deals with pit mines—pit ores, we object.

The Court:
It is not with reference to pit mines? Mr. Burr, all statistics with reference to underground mines are admitted.

Mr. Burr:
Yes, sir.

The Court:
And those as to pit mines are not.

Mr. Burr:
—We except to the pit mines being excluded.

Mr. Cooper:
May we have an opportunity to see that?

Mr. Burr:
These were presented on the pre-trial hearing about two or three months ago.

Mr. Cooper:
It wouldn't take but a moment.

The Court:
All right, you might look at it.

The Clerk:
That will be Plaintiffs' Exhibit 44.

The Court:
Plaintiffs' General Exhibit?

The Clerk:
Yes, sir.

(Thereupon a government publication of the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayers, Director, Entitled, "Iron Ore, Pig Iron, Ferro-Alloys, and Steel," by Robert H. Ridgway and H. W. Davis, and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939," United States Government Printing Office, Washington. 1941, was marked Plaintiffs' Exhibit No. 44.)

Mr. Burr:
We offer next Plaintiffs' Exhibit Number—the general number 8, which is—relates to iron ore production.—

The Court:
What is your last one?

The Clerk:
44 was the last one. This will be Number 8.

Mr. Burr:
—In the year 1940. The other was with reference to the year 1938, as I recall.

Mr. Harris:
We renew our objection to it as a whole, and especially to those parts embracing pit mines.

The Court:
What does this include?

Mr. Burr:

I would suggest, if Your Honor would just let the exhibit come in and then if you want to exclude it, exclude it when we present it.

Wouldn't that be satisfactory?

The Court:

I don't think it would. I think we ought to settle this as we go along.

Mr. Burr:

We have never had an opportunity to present that question. We can present it when we argue the case. The Court is not going to consider anything but relevant evidence, and if Your Honor wants to make a different ruling, you can make it then.

The Court:

Let each one of them look at it now.

Mr. Harris:

If we sweep ahead of us a mass of stuff, we will never—

The Court:

On second thought, I don't think it is well to do that.

Mr. Burr:

All right. Then we will have to have a ruling as to each particular page.

The Court:

Let him inspect it.

Mr. Burr:

All right, sir. I am either going to have the evidence in or a showing as to the evidence. I am not offering anything that I don't think is relevant.

Mr. Harris:
You mean an offer?

Mr. Burr:
Yes, sir.

(Thereupon a Government Publication of the United States Department of the Interior, Bureau of Mines, R. R. Sayers, Director, entitled "Statistical and Economic Surveys, Metal Economic Division, for release January 15, 1941,—Mineral Market Reports, M. M. S. No. 885, Iron Ore Industry in 1940—Advance Summary," was marked Plaintiffs' Exhibit No. 8.)

Mr. Burr:
I offer next General Exhibit Number 16, 17, 18, 19, 20 and 21, all of which are—

The Court:
20 and 21?

Mr. Burr:
Yes, sir. All of which are opinions of the Attorney General, Comptroller of the Treasury, the Comptroller General and the Attorney General, involving interpretation of certain laws that have work hours and traveling time involved.

Mr. Harris:
Now, we object to each one of those documents separately—

Mr. Burr:
Let's do it one way or another. If we are going to object to each one now, let's take them up one at a time. I thought Your Honor suggested we put the exhibits in and consider them at one time.

The Court:

Are you gentlemen familiar with the documents?

Mr. Brodie:

Not from that cursory statement. We think we know. If we do, they are matters on which the Court has already passed.

Mr. Burr:

Not these documents.

Mr. Brodie:

Your Honor held—

Mr. Burr:

You held they were confidential, coming from the other party.

Mr. Brodie:

The Court held they were irrelevant.

Mr. Burr:

No, sir, not these documents.

Mr. Harris:

I don't need to determine any position from my standpoint.

The Court:

I will take it all up at one time.

Mr. Burr:

The next I am going to offer will have to be offered, you might say, in a double aspect.

Your Honor will recall that among the papers that we filed a motion against the Administrator to produce was correspondence between the Comptroller General and

the Department of Labor and the Department of Justice in regard to the legality of the eight hour law,—whether included in the eight hours work was the time that was spent by employees of the Labor Department in being transported in Government boats from San Francisco to Angel Island, and that correspondence was refused on the ground it was inter-Departmental and confidential.

Now, we wrote to the Comptroller General of the United States, complying with their rules, and requested copies of that correspondence, and have here letter dated July 16th addressed to Mr. All. It reads as follows:

"Dear Sir:

"In response to your letter dated July 2, 1941, received July 8, 1941, requesting copies of certain communications respecting the hours of duty of employees of the Immigration and Naturalization Service at the Angle Island Station, California, there are transmitted herewith copies of the following letters:

"Acting Comptroller General, October 28, 1937.

"Department of Labor, November 22, 1937.

"Comptroller General, October 9, 1939.

"Department of Labor, November 2, 1939.

"Acting Comptroller General, August 20 1940.

"Department of Justice, October 3, 1940.

Now, if that is sufficient primary proof, I want to offer it as primary proof.

The Court:

I don't see the relevancy of it.

Mr. Burr:

Your Honor will hear us on that, I guess, when we get to it, I suppose.

The Court:

I can't see what the Angel Island Hours have got to do with it.

Mr. Burr:

Your Honor can't see, if the Departments of the Government, prior to the enactment of the Act, had considered a law similar to the one here under consideration, that wouldn't have any bearing on the intent of Congress?

The Court:

I think there are other things in the ore mines to be taken in consideration.

Mr. Burr:

You will certainly give us an opportunity to be heard before the final ruling?

The Court:

Haven't we passed on that?

Mr. Burr:

No, sir.

The Court:

I will let it be introduced—

Mr. Burr:

First, I want to know if there is any objection on the ground of it not being authentic copies.

The Court:

There is no objection on that ground.

Mr. Burr:

I want to know—If that question is raised I want to take depositions. If it is claimed the letters are not copies, I want time to take proof. It will just put us to this trouble.

Mr. Brodie:

I would like to point out in reference to Mr. Burr's statement that the order on that question specifically recites these documents have been found to be immaterial and irrelevant by the Court.

Mr. Burr:

I wasn't here when that matter was up for consideration.

The Court:

I thought it was taken up.

Mr. Burr:

Yes, sir. I don't see how Your Honor could pass on it until you saw the letters.

That isn't the point we have got now, however. What I want to know is is there any question made on the ground those documents come by letter rather than by deposition?

The Court:

If you had them sworn to—

Mr. Harris:

I would still object. It doesn't make any difference.

The Court:

I sustain the objection.

Mr. Burr:

I want it where I can't have my evidence thrown out if it is necessary to take this case up.

The Court:

We are not ruling on that ground.

Mr. Harris:

I haven't made a single objection on the lack of predicate since the case started.

Mr. All:

In other words, this is going on lack of probative value and materiality in this case?

Mr. Harris:

No, I don't limit it to those two grounds. All I say is the fact he didn't take the man's deposition or get it certified according to the Act of Congress—

Mr. Burr:

All right; that is all I want.

Does the Government agree to that?

Mr. Brodie:

As I understand, when you make an offer, it is merely for the Appellate Court to determine whether the documents are admissible or not. No other question is determined.

In other words, we don't want to waive any other objection we may have to it at other times should that question arise, and for the purpose of the offer of proof we waive the deposition.

Mr. Burr:

That is all there is to it. That is all we wanted done. In other words, this is treated as if it were sworn to by the Attorney General?

Mr. Brodie:

For the purpose of this offer.

Mr. Burr:
For the purpose of this case.

The Court:
It is not objected to on account of its authenticity.

Mr. Burr:
That is all I wanted. I wanted to be certain the record shows that.

The Court:
I am going to sustain the objection.

Mr. Burr:
I want to be certain I have got it in primarily.

Mr. All:
On the ground of lack of materiality?

The Court:
On all grounds.

Mr. Burr:
It is admitted by stipulation that the letters which are attached—copies of the letters which are attached to the letter of the Comptroller General, dated July 16, 1941, are correct copies of the letters sent by the respective parties the letters show.

Mr. Brodie:
May it please the Court, we don't admit that, because it has been ruled it is immaterial.

Mr. Burr:
No, we don't want to get to that until this is settled. I don't offer them—

The Court:

Just a minute. Let him talk, Mr. Burr.

Mr. Brodie:

Our point is since the objection has been sustained, the it not necessary for the exhibit to be in the form of admissible proof, but just so Mr. Burr can make a showing as to the exhibit. If the Appellate Court should hold Your Honor is wrong, then we should wish later to be in position to require him to put his testimony in admissible form. That is all that is before Your Honor now.

Mr. Burr:

I haven't even offered this yet. I brought up this matter first. I am solely asking if there is any point made—I am talking about the trial of this case,—I am not talking about any future trial,—if there is any point made on the question we haven't got the deposition of the Attorney General?

Mr. Harris:

For my part—

The Court:

I will listen to Colonel Harris.

Mr. Harris:

I have stated I do not object on that ground. I do not take any position. I don't object to it on that point.

Mr. Burr:

Is that the Government's position?

Mr. Brodie:

Our position is simply we do not waive any objection to the admissibility of the documents if they are held admissible by the Appellate Court. They have now been held

immaterial. It is not necessary for us to indicate the grounds of our objection.

Mr. Burr:

They haven't been held immaterial. I haven't offered them.

Mr. Brodie:

I thought objection had been sustained.

Mr. Burr:

Oh, no. I haven't offered them and can't offer them.

What is Your Honor's ruling whether the preliminary proof is met?

The Court:

It is sufficient.

Mr. Burr:

It is sufficient?

The Court:

That is what I understood a while ago.

Mr. Burr:

That is what I thought, but their statements—

The Court:

Go ahead.

Mr. Burr:

With that statement, I offer separately and severally the separate and several letters attached to the letter from the Comptroller General of the United States to Mr. Ali. First, I offer, separately and severally, the separate and several letters, and, second, those portions of the letters which refer to hours worked by the San Francisco—the

work at Angel Island. There are other matters in the letters that relate to other questions of the account.

Mr. Harris:

And we object to them, separately and severally, on the ground, illegal, irrelevant, incompetent and immaterial and transactions between third parties, res inter alios acta, and shed no light on the issues in this case.

Mr. Smith:

We adopt that same objection, and add to it it throws no light on iron ore mines,—underground iron ore mines.

The Court:

The Court sustains the objection.

Mr. Burr:

And your Honor will give us the right, in the final argument of this case, to present authorities on this? The matter is all here before you.

Mr. Smith:

Let's get rid of it now.

Mr. Burr:

Why get rid of it now?

Mr. Smith:

That is what we are here for.

Mr. Burr:

Why take this thing in piecemeal? Your Honor does not want to exclude matter that is relevant when you hear—

The Court:

It depends on how long you are going to take.

Mr. Burr:

It depends on how long Your Honor will give us. If you don't want to hear it, we will put it in brief.

The Court:

I prefer to hear it argued orally.

Mr. Burr:

I prefer to argue it orally.

Mr. Harris:

I want to argue the case orally, but that is a different thing from what Mr. Burr wants. When I come to—

The Court:

I don't want to do that.

Mr. Burr:

Then we ask Your Hono to give us time to present our views about this particular matter we now have under consideration.

Mr. Harris:

That has been heard in a hearing with Mr. All and these gentlemen present.

Mr. All:

No, sir; you couldn't pass on it without seeing the documents.

Mr. Burr:

I want the privilege of making our presentation.

Mr. Harris:

Our position is that we shouldn't finish the case and then Your Honor turn into a Court of review and review what you have done for two weeks.

The Court:

I am not going to do that.

(Thereupon exhibits were marked as follows:

"Eight-Hour Law—Reclamation Service," 26 Opinion of Attorney General, 64, dated October 11, 1906, was marked Plaintiffs' Exhibit 16.

"Eight-Hour Law—Hours of Service of Lock Tenders, Etc.," 26 Opinions of Attorney General, 605, dated May 11, 1908, was marked Plaintiffs' Exhibit No. 17.)

"Traveling Expenses—Railway Postal Clerks," 27 Comptroller of the Treasury, 1060, dated June 14, 1921 was marked Plaintiffs' Exhibit No. 18.

"Compensation—Extra Pay for Night Work—Railway Postal Clerks," 9 Decisions of the Comptroller General 200, dated November 11, 1929, was marked Plaintiffs' Exhibit No. 19.)

"Compensation—Overtime—Forty Hour Week," 14 Comptroller General, 907, dated June 18, 1935, was marked Plaintiffs' Exhibit No. 20.

"Application of the Eight Hour Law to Employees of the Civilian Conservation Corps," Opinion Attorney General of the United States, was marked Plaintiffs' Exhibit No. 21.

Letter dated July 16, 1941, to Mr. Ernest L. All, Care of Bradley, Baldwin, All & White, 2100-28, Comer Building, Birmingham, Alabama, from the Comptroller General of the United States, with the following letters attached:

Letter of Acting Comptroller General, dated October 28, 1937;

Letter of Department of Labor, dated November 22, 1937;

Letter of Comptroller General, dated October 9, 1939;

Letter of Department of Labor, dated November 2, 1939;

Letter of Acting Comptroller General, dated August 20, 1940;

Letter of Department of Justice, dated October 3, 1940, was marked for identification, Plaintiffs' Exhibit No. 45.)

Mr. Burr:
I find yesterday on my offer on coal mine evidence—I want to include in the offer—the first is a letter of President Wilson, addressed to G. B. McCormack and John Kennamer, President of District 20. I want to include that in the offer of proof.

Mr. Harris:
We object.

The Court:
What is the date of that, Mr. Burr?

Mr. Burr:
19th of March, 1920.

Mr. Harris:
We object along the lines we objected to the other testimony.

The Court:
I sustain the objection.

Mr. Burr:
I understand all this coal proposition is sustained. I am just adding to the offer of proof.

The Clerk:
Do you want this marked for identification?

Mr. Burr:
Yes, sir.

The Clerk:
It will be Plaintiffs' Exhibit 46 for identification.

(Thereupon a letter signed Woodrow Wilson, dated March 19, 1920, and addressed to G. B. McCormack, President Alabama Coal Operators Association, and John Kennamer, President of District No. 20, Both Birmingham, Alabama, was marked for identification Plaintiffs' Exhibit No. 46.)

Mr. Burr:
And then the next exhibits are the copies of the coal contracts which were not offered on Yesterday, and the extensions of them as made between the coal operators—Alabama coal operators and District 20, United Mine Workers of America.

Mr. Harris:
We object.

The Court:
Sustained.

(Thereupon the following documents:

"Wage Agreement between Alabama Coal Mine Operators and District 20, United Mine Workers of America, Effective September 22, 1935, Expires April 1, 1937,"

"Wage Agreement between Alabama Coal Mine Operators and District 20, United Mine Workers of America, April 1, 1937, to April 1, 1939,"

And form of Agreement extending the April 1, 1937, to April 1, 1939, agreement to April 1, 1941,

And temporary agreement, dated Birmingham, Alabama, May 8, 1941, extending, pending negotiations, the contract expiring March 31, 1941 until such time as a new agreement shall be negotiated,

were marked for identification Plaintiffs' Exhibit 47.

Mr. Burr:

Now, the next one, Your Honor, and I think the last one if I can find a memorandum I took this morning,—no, sir, it is not quite the last one. There are one or two others.

We want to offer next the release of the Administrator dated July 11, 1941, which is identified as Release 1448; and which related to an opinion of the Administrator in reference to traveling time from fences, walls and other anti-sabatage barriers to working places.

Mr. Harris:

We object.

The Court:

Sustained.

The Clerk:

It will be General 48 for the Plaintiffs.

Mr. Burr:

We except, the same exception we have had.

I understand Judge Smith is objecting?

Mr. Smith:
Yes, sir.

Mr. Burr:
And I want to know if the Government is objecting?

The Court:
The intervener?

Mr. Brodie:
Yes, sir; it is immaterial.

The Court:
You all ought to object if you are going to object, and don't wait until you are told.

Mr. Brodie:
I assumed if Mr. Harris objected it was assumed we objected also, unless we had something else.

The Court:
You object?

Mr. Brodie:
Yes, sir.

The Court:
The objection is sustained.

(Thereupon a document entitled "U. S. Department of Labor, Wage and Hour Division, Washington,—Working Time Does Not Necessarily Begin at Plant Gates Administrator Says," bearing notation "For release Afternoon Papers, Wednesday, June 11, 1941;—R-1448" was marked for identification Plaintiffs' Exhibit No. 48.)

Mr. Burr:

We want to offer next the interrogatories propounded to the intervener and the answers of the interveners to those interrogatories.

Mr. Harris:

And I, of course, object for my clients as to all interrogatories.

Mr. Smith:

And we interpose the same objection.

The Court:

Whose interrogatories are they; Plaintiffs?

Mr. Burr:

Plaintiffs interrogatories.

The Court:

What do they pertain to, coal mines or ore mines?

Mr. Burr:

Sir?

The Court:

What does it pertain to, coal mines or ore mines?

Mr. Burr:

Pertains to ore mines as far as I know, those that were answered. We filed a number of interrogatories and Your Honor sustained objection to a great many of them, and these are the answers to the ones to which you did not sustain objection.

The Court:

All right.

Mr. Burr:
Do you want those read or just consider them read?

The Court:
How long will it take?

Mr. Burr:
Probably half an hour.

Mr. Cooper:
You are referring to our answers to your interrogatories?

Mr. Burr:
Yes, sir.

Mr. Cooper:
We have filed answers without waiving objections, and we would like to be heard on those.

The Court:
Suppose you read the questions and answers.

Mr. Burr:
Before we get to reading them, I want to call Your Honor's attention to the order that was made sustaining objections of the intervener to a number of these questions, and I note that inadvertently there was no exception given to us as against the ruling of the Court.

The Court:
I will give you an exception.

Mr. Burr:
We will just state for the record Plaintiffs are allowed exceptions, separately and severally, to the ruling of the Court as to its action in sustaining intervener's objections

to the separate and several interrogatories the Court did sustain objection to.

The Court:
All right.

Mr. Burr:
May I also, at the same time, before I overlook it, have a similar exception to the ruling of the Court on the motion to produce the papers and documents?

The Court:
You don't have to have that.

Mr. Burr:
I was not certain.

The Court:
Under the new rules—

Mr. Burr:
Those rules—

The Court:
Probably that is why it was overlooked.

Mr. All:
Is that true of all these adverse rulings and motions, that we have an exception?

The Court:
I think possibly in the interrogatories it is.

Mr. All:
If not, it is understood we have it?

The Court:
As to evidence and rulings on motions, there doesn't have to be any exception, but as to interrogatories I am not sure, but I give you the exception. I allow it.

Mr. Burr:
Judge, shall I just read these?

The Court:
Yes, sir, that will be better.

Mr. Burr:
I will read the questions and answers, and if there is an objection, they can make the objection.

"State when you were appointed—"

The Court:
Who is this interrogatory propounded to?

Mr. Burr:
The intervener.

The Court:
What witness?

Mr. Burr:
The intervener.

"I was appointed on the 4th day of March, 1940."

"State when you were qualified—"

Mr. Cooper:
Mr. Burr, may I interrupt?

Mr. Burr:
Yes, sir.

Mr. Cooper:
Shall we state our objections?

The Court:
That is what he stated.

Mr. Burr:
"If I understand your question, the answer is March 4, 1940."

"State when you began to serve as Administrator of the Wage and Hour Division of the United States Department of Labor?"

"I began to serve as Administrator on the 4th day of March, 1940."

The next I see answered—I am skipping the ones Your Honor sustained objection to. You had better follow me on this

Mr. Cooper:
Mr. Burr, will you let me see the file? I haven't found our copy of the written objections.

Mr. Burr:
I haven't got it.

The Clerk:
Here is the clerk's file.

Mr. Cooper:
All right.

I found your answer here if you want it.
Here is the way it reads:

"Philip B. Fleming, being duly sworn, makes the following answers to interrogatories propounded to him in the above entitled cases, except those interrogatories to which intervener has filed objections:"

There couldn't be any objection to those. He answered those without objection.

Mr. Brodie:
We filed objections to the interrogatories propounded by plaintiffs and that reads as follows, if I may read it.

The Court:
Yes.

Mr. Brodie:
"Now comes the intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, and objects to the written interrogatories propounded to him by plaintiffs on the grounds that said interrogatories are not material and relevant to the issues of these cases, and many call for information contained in confidential government files, and which is privileged from disclosure.

"Without waiving his objections to the relevancy and materiality of said interrogatories and preserving his right to object to the introduction of such interrogatories and the answers thereto at the trial of these cases, will answer many and will file said answers within the time limited by rules of Court. The following interrogatories will not be answered by intervener and they are all, and each is, objected to on the grounds that they are not material to

any of the issues of these cases, and because they relate solely to an attempt to prove the processes by which an administrative officer of the United States Government reach a conclusion respecting the policies to be pursued by him in performing his official duties; and the correctness of that conclusion is not an issue before this Court, and for additional reasons hereinafter specified."

Mr. Burr:
When is that dated, please, sir?

The Court:
Then we had a hearing on that motion.

Mr. Burr:
Yes, sir.

Mr. Cooper:
And Your Honor sustained all our specific objections.

The Court:
Then why shouldn't that eliminate any argument here today?

Mr. Burr:
That is the way I see it.

Mr. Cooper:
I am not sure I made myself perfectly clear to Your Honor. As to those to which you did not sustain objection, although we answered them, we reserve an exception.

The Court:
I am going to permit those to be read they have answered.

Mr. All:
Your Honor, will you take a statement from me—

Mr. Burr:

Let's don't waste any time. He has ruled with us.

"B. State whether or not you are the Administrator duly appointed under Section 204 of the Fair Labor Standards Act of 1938 (hereinafter referred to as the Act).

The answer is, "Yes."

"C. State when you, under your appointment, took the direction of the Wage and Hour Division created in the Department of Labor pursuant to the terms of the Act."

He says, "See 1-A(c)."

"D. State whether or not when and since you assumed the direction of the Wage and Hour Division in the Department of Labor all the employees in said Division became and have remained until the present time under your supervision and direction."

"Yes."

"E. State whether or not when and since you assumed the direction of the Wage and Hour Division in the Department of Labor all the papers, files and records of the Wage and Hour Division in the Department of Labor became and have remained,

"(a) In your custody on control, or

"(b) Subject to your direction and control."

The answer is, "Yes."

"F. Give the name or names of the person or persons who served as Administrator of the Wage and Hour Divi-

sion previous to the time you began your service and state whether or not, so far as you know, all the papers, files and records of the Wage and Hour Division, as administered by the previous Administrator or Administrators were turned over to you and have since such time been, and now are, in your custody or under your direction and control as Administrator."

Answer: "Elmer E. Andrews and Harold D. Jacobs, acted as previous Administrators. So far as I know, all the papers, files and records of the Wage and Hour Division as administered by the previous Administrators were turned over to me and they are now under my direction and control as Administrator."

"G. State whether or not, as Administrator of the Wage and Hour Division of the Department of Labor, you have access to the papers and files of the Department of Labor which are in other departments thereof."

Answer: "This question cannot be answered unqualifiedly. I have access to the papers which have to do with the administration of the Act."

"H. State whether or not you can, as such Administrator, on request, secure access to the papers, files, or records of the Department of Labor, other than the Wage and Hour Division thereof."

The answer is, "I have no control or direction over papers in the Department of Labor, other than those papers which pertain to the administration of the Wage and Hour Division. My ability to secure such papers is dependent upon receiving permission from the Secretary of Labor, who has control of such papers."

"I. State whether or not the heads of other departments of the Department of Labor other than the Wage and Hour Division will, at your request, allow you to have the originals or copies of any papers in their files which are relevant to the issues in this case."

Answer: The only papers in the Departments of the Department of Labor other than the Wage and Hour Division which may be relevant to the issues of this case are those containing information which has been made public and which I am informed by counsel are subject to judicial notice."

"J. State whether or not you are willing to request from the heads of other departments of the Department of Labor, other than the Wage and Hour Division, the originals or copies of any papers, files, or records which are or may become relevant and material to the issues in this case."

"I should be willing to request of the heads of departments of the Department of Labor other than the Wage and Hour Division papers, files and records which have been made public and are not confidential as relevant and material to the issues of this case."

"Interrogatory II. Will you please examine the paper attached to the complaint in Civil Action File 5232, in which the Tennessee Coal, Iron & Railroad Company a corporation, is petitioner and plaintiff, and which is marked 'Exhibit A', and made a part of the complaint?

"A. Is such Exhibit 'A' a complete and correct copy of an opinion rendered by you as Administrator of the Wage and Hour Division, designated 'R-1315 (revised)', for release on Sunday, March 23, 1941, and of a reported desig-

nated 'G-131', which was attached to such opinion for release on Sunday, March 23, 1941?"

The answer is, "Yes."

"B. If such Exhibit 'A' is not a correct and complete copy of such opinion and such report attached to your answer to this interrogatory a correct and complete copy of such opinion and report."

The answer is, "See Answer to 'A'."

"C. Please refer to the original report as made by Mr. Stein and state in reference to such report:

"(a) When it was signed."

The answer is, "On date indicated on report, March 15, 1941."

I am skipping those that are not answered.

"F. Has it been and is it now customary in the Wage and Hour Division of the United States Department of Labor for opinions and reports to be prepared for release to the press in mimeographed form and for distribution to the public generally?"

Answer: It has been and is customary in the Wage and Hour Division of the U. S. Department of Labor to release opinions and reports to the press in mimeographed form and for distribution to the Public generally, when, in the opinion of the Administrator, it is deemed to be of sufficient public interest."

"G. Is Exhibit 'A' a correct copy of the opinion and report for release on Sunday, March 23, 1941, and was it

given out for release in accordance with the custom and practice asked about in the immediately preceding question?"

"Yes."

"H. The announcement of the 'Modified Portal to Portal Wage and Hour Opinion' bears the designation 'R-1315 (revised)'. "Please state what this designation signifies."

Answer: "This designation signifies the official release of the opinion of the Administrator. It is a revision of an unofficial release."

"N. State whether or not the opinion which you finally rendered in this case is correctly stated and set forth in Exhibit 'A'. State whether or not that is your opinion as Administrator at the time of the answering of these interrogatories. State whether or not it is your purpose in administering the Act to follow such opinion unless the same is judicially declared to be incorrect."

Answer: My opinion is correctly stated as set forth in Exhibit A of the petitioner's complaint. It is my present opinion as Administrator. The opinion referred to is a notification and a guide to all interested parties of my interpretation of the Fair Labor Standards Act as applied to the situation described in that opinion. There is no duty imposed upon me by the Act to issue any interpretations and such interpretations as are issued by me are not binding upon the Courts or the parties.

"I intend to follow the interpretation in question unless directed otherwise by the authoritative rulings of the Courts, or unless I should subsequently decide that my prior interpretation is incorrect."

The next that is answered seems to be Interrogatory V.

"D. Please refer to that portion of plaintiffs complaint in cause number 5232 wherein the Tennessee Coal, Iron & Railroad Company is plaintiff which sets out what purports to be a copy of a release by the Wage and Hour Division for release morning papers, Saturday, July 27, 1940, R-928, and state whether or not:—"

Mr. Brodie:

Excuse me. I think some of those have been offered and objection sustained.

Mr. Burr:

I think that relates to coal.

The Court:

Then it will be stricken.

Mr. Burr:

The same thing applies to D (a), D (b) and E; and the next one, if Your Honor please, F and F (a) and (b) also relate to the coal address delivered by him out in—

The Court:

Well, that is stricken.

Mr. Burr:

That is stricken, and we except to that.

The Court:

Yes.

Mr. Burr:

H relates to another that was excluded when it was offered,—the letter,—which was the letter of Colonel Fleming to the Editor of the Mining and Engineering Journal,

so, under the same ruling, I guess that would have to come out.

The Court:
Yes, sir.

Mr. Burr:
And we take an exception.
I call Your Honor's attention to the fact, in connection with the answer to the last interrogatory, that letter which we offered to introduce was a copy of the letter there referred to. That is in I and J. The letter goes out or not?

Mr. Harris:
We object to the letter.

Mr. Burr:
You haven't anything to do with that.

Mr. Harris:
I have objected to all of it.

Mr. Burr:
This is not against you.

Mr. Brodie:
I object.

The Court:
I sustain the objection.

Mr. Burr:
And we except. All right, sir.

The next one is on page 18 that I see answered. It is Roman VIII and letter A.

"State whether or not statistical and economic studies have been made by the Bureau of Labor Statistics in the Economic Section of the Wage and Hour Division in relation to the production of the United States in underground mines of iron ore separate and apart from the production of any other mining products."

The answer is: "I am informed that there are authoritative studies made by government agencies or under government auspices on the production of iron ore in underground mines of the United States, and that such studies are public documents and are as available to plaintiffs and their counsel as they are to me or my counsel or representatives.

"I am further informed that the Research and Statistics Branch of the Wage and Hour Division has made no such studies, but that it may, in preparation of the trial of these cases consult authoritative sources to determine the production of iron ore by underground mines of the United States.

"Counsel informs me that such data are the subject of judicial notice."

Now, the next one is E under that same Roman VIII.

"State whether or not any investigations made by the Wage and Hour Division took into consideration competitive inter-relationships and or the convertability of operations normally carried on in underground iron ore mining operations as contrasted with either the stripping or open pit operations producing iron ore, or the underground operations of mines producing gold, silver, zinc, copper or products other than iron ore."

Answer: "Because of its indefiniteness, I am not sure what this question means. If it is meant to inquire wheth-

er the Wage and Hour Division has considered competition between underground iron ore mining operations and open pit iron ore mining operations, or between underground iron ore mining operations and underground operations of mines producing products other than iron ore, my answer is that I am informed that a study of the competition and competitive factors existing between underground and open pit iron ore mining may be made in preparation for the trial of these cases."

"F. State whether or not the Wage Hour Division or any of its employees ascertained, or whether, within your knowledge, there exists as a fact any competitive interrelationships between the underground iron ore mining operations of plaintiffs in the State of Alabama and the underground operations in other parts of the United States producing gold, silver, zinc, copper or products other than iron ore."

Answer: "I am informed that at the present time it is not known whether there exists any competitive interrelationships."

"H. State whether or not your investigation disclosed that there existed substantial differences in the methods of underground iron ore mining operations of different sections of the United States as contrasted with such underground iron ore mining operations in other sections of the United States."

"The question is indefinite, since it is not indicated what is meant by 'substantial'. I do not know that there exists differences in methods of underground iron ore mining operations in different sections of the United States."

"I. If you have answered the immediately preceding question in the affirmative, are such differences substantial or insubstantial,—little or great?

"I cannot answer this question because of its indefiniteness."

"J. State whether or not your investigation disclosed that the length of time used by underground mining employees in traveling from and to the portal or the mine to their usual working places varies in different mines in the same locality, and also varies in different mines located in various parts of the United States?"

The answer is, "Yes."

"K. Are the differences inquired about in the immediately preceding interrogatory substantial or insubstantial,—great or small?"

The answer is, "I cannot answer this question because of its indefiniteness."

"L. Is it not a fact that the difference of the length of time spent by the underground mining employees in traveling to and from the portal of the mine from and to their usual working places varies, according to your research and investigation, in different underground mining operations in different sections of the United States from as small a time as a comparatively few minutes, to as long a time as two hours?"

The answer is; "Yes."

The Court:

That is all?

Mr. Burr:

Yes, sir. He attaches the exhibits, and the first one is the release of July 27, 1940, which relates to coal, and which Your Honor excludes, and we except.

The Court:
That is excluded.

Mr. Burr:
And the next one is an address delivered by Colonel Fleming, which also relates to coal, which Your Honor excludes, and we except.

The Court:
That is excluded.

Mr. Burr:
Next is Interpretive Bulletin 13, which is attached.

The Court:
That is excluded also; that is on coal.

Mr. Burr:
No, sir; 13 is his general interpretative bulletin he issued on traveling time and various other things. We have no objection to it. If they want it in, it is fine.

Mr. Harris:
I think he offered that before.

Mr. Burr:
We are offering it.

Mr. Brodie:
I think I can explain that. When the Act was passed, the Administrator issued a series of interpretive bulletins in which he said, "This is what I think the law is—".

Mr. Burr:
Do you object to it?

Mr. Brodie:
I don't think it makes any difference.

The Court:
What is the date of it?

Mr. Burr:
It is dated—

Mr. Brodie:
I think the Court can take judicial knowledge.

Mr. Burr:
—October 30, 1940.

The Court:
It is in.

Mr. Harris:
I have objected to it, Your Honor.

Mr. Quinn:
We have no objection.

Mr. Burr:
They have no objection. Then everybody is satisfied.

Mr. Harris:
I don't think I made myself clear. I said I have an objection.

The Court:
I overrule the objection.

Mr. Burr:
Next we want to offer as against—as an independent exhibit,—it is already in as an exhibit to the answers, but we want to offer as against everybody the Administrator's opinion as a true copy of the opinion. It is referred to in

the pre-trial agreement, and we are offering that against everybody.

Mr. Harris:
And in the pre-trial agreement I agreed not only it would be a true copy, but that it was admissible.

Mr. Burr:
Was what?

Mr. Harris:
Was admissible.

Mr. Burr:
Then that is in evidence?

The Court:
It is in evidence.

Mr. Burr:
We offer it as a true copy.

The Court:
Yes, sir.

Mr. Burr:
That includes the report itself: it is all one report.

The Court:
The report upon which the opinion is based?

Mr. Burr:
Yes, sir, and that is attached to it.

The Court:
I believe there were two of those men made the report?

Mr. Burr:
No, sir, just one; Mr. Stein.

The Court:
Stein?

Mr. Burr:
Yes, sir.

The Court:
I was thinking there was someone else with him.

Mr. Burr:
We are through. It is adjourning time—Yes, sir, there is one other thing I want to offer I was about to forget.
Let me have the affidavits. I would like to ask the Administrator's attorneys if they will be kind enough to let me have the original affidavits that were filed on the hearing by Mr. Kendrick—

Mr. Harris:
By whom?

Mr. Burr:
Mr. Kendrick, who was president of the Smelter's Local at Republic. I want to offer those by way of admissions as against those particular individuals who are parties defendant to the case.

Mr. Brodie:
Well, I am obliged to refuse to produce anything from the Government's files.

Mr. Burr:
Might I ask a question there? You produced one the other day made by Mr. Thompson, didn't you?

Mr. Brodie:
We object to that question.

Mr. Burr:
I would like just to get his refusal on the record. I have copies. Can we find those during the recess?

The Court:
I would like to finish.

Mr. Burr:
That is all there will be.

Mr. Smith:
What is that? I didn't understand.

Mr. Harris:
I understand there was an affidavit of some individual miner who was an officer of the union. I don't know what it is. I don't know that I have ever seen the affidavit. When I see it I may want to object to it.

Mr. Smith:
Is that on the theory of estoppel?

Mr. Burr:
No, sir, it is an admission.

The Court:
Is that an affidavit of an individual?

Mr. Burr:
Yes, sir.

The Court:
Was that authorized by the local?

Mr. Burr:

No, sir, I don't suppose it was, but I am offering it against this particular individual.

Mr. Smith:

Wouldn't that come up when you got to that individual, whether he is entitled to something?

Mr. Burr:

It is not relating to whether he is entitled to something; it relates to how he was paid and matters of that sort.

Mr. Smith:

That don't seem to be anything new in this case.

Mr. Burr:

I think we have finally found it. Shall I read it to Your Honor.

Mr. Harris:

I want to object to it, if I may see it.

The Court:

Is that the only one you have?

Mr. Burr:

Yes, sir. There are five or six of them under one cover.

The Court:

The same—

Mr. Burr:

Yes, sir. I think they signed the same affidavit.

Mr. Harris:

Now, we object to a specific part of this which begins at the bottom of page 1, Mr. Burr, which involves conclu-

sions and hearsay and general reputation, and are not—whether in the form of an affidavit or any other form, would not be legally competent evidence, if the Court please.

Mr. Burr:
All right. Shall I read it to Your Honor?

The Court:
You might read it, Mr. Burr, and then I will rule on it.

Mr. Burr:
"State of Alabama, Jefferson County:

"Before the undersigned authority in and for said state and county personally appeared R. H. Kendricks, M. C. Crawford and Hiram S. Peterson,—"

Mr. Kendrick has been identified as chairman of the Raimund Local, and the others are members of the Local Committee at Raimund.

"—who, being first duly sworn, depose as follows:

"Affiant Kendricks deposes that he is at the present time working as a drill sharpener in the ore mines of the Republic Steel Corporation (hereinafterward referred to as the 'Republic Company') at Raimund, Alabama; that he has been in the employment of this company and its predecessors in its ore mining operations at Raimund for twenty-six years.

"Affiant M. C. Crawford deposes that he is at present a surface foreman for the Republic Company at its Raimune ore mining operations; that he has been in the employment of this company and its predecessors for about forty years, during which time he has served in various capacities in-

side and outside of the mines, having for some time served as assistant superintendent and acting superintendent.

"Affiant Hiram S. Peterson deposes that he formerly was an employee of the Republic Company and has only recently retired. Affiant Peterson further deposes that he first entered the employment of the Republic Company in 1907, and that with the exception of three years, when he was employed by the Tennessee Coal, Iron & Railroad Company as carpenter foreman at one of its ore mining operations, and with the exception of service in the army during the World War, he has been in the employment of the Republic Steel Corporation and its predecessor serving as underground foreman, as repair man, as timber man, and in other capacities.

"All of affiants—"

Here is where your objection begins.

"All of affiants further depose that during all of the time of their employment by the Republic Company they have been acquainted with the custom and practice in the ore mine of the company in reference to computing the hours of work for which men are paid, and know that the computation was made and the men were paid on the basis of time actually spent by them at the face or at their usual working places; that the men have always been paid and have always accepted their pay on the basis of time spent at the working place, and without any consideration for the time spent in going to and from the portal of the mine to the face.

"Affiants further depose that they have never heard, until recently, of any claim being made that there should be included in the time worked for which the men are to be paid the time spent in going to and from the working place or the usual place of work, and that so far as they

know, no one has ever, until recently, when they heard of this present claim, made such a contention."

Mr. Harris:
The part I object to—

The Court:
I see—

Mr. Harris:
—is where it starts, "that the men have always been paid and have always accepted their pay on the basis of the time spent at the working place, and without any consideration for the time spent in going to and from the portal of the mine to the face," because that is something that it appears on its face a man couldn't possibly know. It involves a conclusion, and couldn't be an admission against these other parties.

Mr. Burr:
It is an admission—

The Court:
I will admit it.

Mr. Harris:
And we except.

And also that part, "Affiants further depose that they have never heard, until recently, of any claim being made that there should be included in the time worked for which the men are to be paid the time spent in going to and from the working place or the usual place of work, and that so far as they know, no one has ever, until recently, when they heard of this present claim, made such a contention."

The Court:

You couldn't possibly get it in only on that theory that it is an admission.

Mr. Burr:

That is right.

Mr. Harris:

It couldn't be any admission against anybody but the man that made it.

The Court:

That is right.

Mr. Smith:

If the Court please, we object to it on the part of the A. F. of L. because all our clients are in the Tennessee Company.

The Court:

As I said, Mr. Smith, it will not be applicable to anybody except this man.

Mr. Burr:

Substantially the same affidavits are made by Herbert McCoy, Sam Pearson, and perhaps other. I don't want to put anything in here I am not certain about. I know Mr. Kendricks is a party to the suit and an officer of the Smelters. I am not certain about these other three. I want to qualify offering their affidavits until I ascertain that fact. I notice by reading their affidavits apparently they were not officers of the Smelters. I think one of the held the position of assistant superintendent at some time.

The Clerk:

This will be Exhibit 49.